

EXHIBIT A

1 of 2

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 CARLOS CHINCHA,
4 Plaintiff,
5 -against- Case No: 1:17-cv-06127
6 MANOJKUMAR PATEL, in his individual and
7 professional capacities,
8 Defendant.
9

10 April 23, 2020
11 11:01 a.m.
12
13 VIDEOCONFERENCE DEPOSITION of
14 CARLOS CHINCHA, taken pursuant to Notice,
15 before Toni Freeman Greene, a Court Reporter
16 and Notary Public of the State of New York.
17
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22

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2

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25

1 A P P E A R A N C E S (Cont'd):

2

3 ALSO PRESENT:

4 CHRISTINA DIAZ, Spanish Interpreter

5 DEAN MCCONKEY, Spanish Interpreter

6 SHIRLEY SANCHEZ

7 MAGISTRATE JUDGE STEVEN L. TISCIONE

8 ANDY ZAMPELLA

9

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** ALL PARTIES APPEARING VIA VIDEOCONFERENCE **

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1 ----- I N D E X -----
2

WITNESS	EXAMINATION BY	PAGE
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	MR. LEON	228

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Determination

22 (EXHIBITS TO BE PRODUCED)
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1 P R O C E E D I N G S

2 THE REPORTER: The attorneys
3 participating in this deposition
4 acknowledge that I am not physically
5 present in the deposition room and that I
6 will be reporting this deposition
7 remotely.

8 They further acknowledge that, in
9 lieu of an oath administered in person, I
10 will administer the oath remotely,
11 pursuant to Executive Order Number 202.7
12 issued by Governor Cuomo on March 19,
13 2020.

14 The parties and their counsel
15 consent to this arrangement and waive any
16 objections to this manner of reporting.

17 Please indicate your agreement by
18 stating your name and your agreement on
19 the record.

20 MR. MIZRAHI: Jason Mizrahi from the
21 law offices of Levin-Epstein &
22 Associates, P.C., attorney for the
23 Defendant, Manojkumar Patel. We consent.

24 MR. LEON: Louis Leon, Plaintiff's
25 counsel, consent to that as well.

1 S H I R L E Y S A N C H E Z ,
2 Spanish Language Interpreter, was
3 thereupon duly sworn on oath to translate
4 faithfully the questions asked and the
5 answers given to the best of her ability.

6 C A R L O S C H I N C H A ,
7 the witness herein, having been first duly
8 sworn by a Notary Public, was examined and
9 testified as follows:

10 EXAMINATION

11 BY MR. MIZRAHI:

12 Q. Good morning, Mr. Chincha.

13 A. Good morning.

14 Q. My name is Jason, I represent the
15 Defendant in this action.

16 You're here this morning to sit for
17 a deposition, and before we begin I just wanted
18 to go over some ground rules, that way we can
19 make sure that we finish early without running
20 into any unnecessary issue. Okay?

21 A. Okay.

22 Q. If at any point you don't understand
23 any of my questions, please let me know and
24 I'll be happy to rephrase them.

25 A. Okay.

1 Q. If you don't ask me to rephrase
2 them, I'm going to take that as you
3 understanding the question.

4 A. Okay.

5 Q. If at any point you'd like to take a
6 break, just let me know and I'd be happy to
7 take a break. The only thing I'd ask is that,
8 if there's a question that is directed to you,
9 please answer the question before you ask to
10 take a break.

11 A. Okay.

12 Q. Most importantly, please make sure
13 you speak in a loud, clear voice and give
14 verbal responses to my questions.

15 A. Okay.

16 Q. What that means, Carlos, is, please
17 avoid from nodding your head up and down or
18 side to side. All of your responses have to be
19 verbal.

20 A. Okay.

21 Q. One last thing. I understand that
22 your daughter is in the room with you; is that
23 correct?

24 A. Yes.

25 MR. LEON: Jason, like I said

1 previously, I wanted to make a quick
2 statement about this as soon as we --
3 Jason. Jason.

4 Okay. Mr. Chincha, I'm directing
5 you, for the time being --

6 MR. MIZRAHI: You're not allowed to
7 make any --

8 MR. LEON: Jason, we're going to
9 speak one at a time and I started. You
10 have this nasty habit of speaking over
11 me. Let me finish.

12 Madam Translator, please -- Jason.
13 Jason. I'm directing my client to hold
14 off from answering questions until I've
15 put my statement on the record --

16 Jason. Jason. I told you before we
17 started that I wanted to put a statement
18 on the record and you are deliberately
19 trying to prevent me from doing that.
20 So, you can continue delaying this --

21 Jason. Jason. Jason. You can
22 continue talking over me, but until this
23 is done, until I put my statement on the
24 record, you are not going to continue
25 getting answers from my client until I'm

1 done making my quick statement.

2 MR. MIZRAHI: I will be calling the
3 Court --

4 MR. LEON: I'm going to make my
5 statement.

6 Number one -- Jason. Number one --
7 Jason. Jason. Jason. Jason. I'm going
8 to finish my statement for the record.

9 Number one, this is to confirm that
10 this deposition is not being video
11 recorded in any shape or form.

12 When we were about to start this
13 deposition you attempted to start
14 recording this deposition without giving
15 us prior notice.

16 When we brought to your attention
17 that you had not served a depo notice
18 explaining that this deposition remotely
19 being taken would be recorded, you
20 decided to not continue with a video
21 recording.

22 So, to that extent, if anything's
23 being recorded, this will not be
24 admissible in any shape or form.

25 Lastly, I told you before we started

1 the deposition, I told you I would
2 properly put a statement on the record
3 disclosing it to you -- because it's not
4 a secret, I told you before we started --
5 that my client's daughter's in the room.
6 She will only be assisting for technical
7 reasons related to Zoom, document
8 sharing, zooming in, being able to access
9 the Zoom application.

10 That is the role -- that is her
11 limited role in this deposition and it's
12 our position that she's going to need to
13 be there the entire deposition to make
14 sure that nothing gets dropped,
15 disconnected, X'd out, because my client
16 doesn't know how to do it.

17 So, I'm putting that on the record;
18 proceed to asking your questions, Jason.

19 MR. MIZRAHI: Toni, are we on the
20 record?

21 THE REPORTER: Yes, we are.

22 MR. MIZRAHI: I'm going to be
23 placing a phone call to the chambers of
24 Magistrate Judge Steven L. Tiscione.
25 We'd like to have this phone call placed

1 on the record.

2 THE REPORTER: Thank you.

3 MR. LEON: Madam Translator, could
4 you just advise my client that a call
5 will be made to chambers and that he is
6 not being asked any questions and he is
7 not, right now, to interact with anyone
8 in this deposition while attorneys call
9 the Judge.

10 THE INTERPRETER: Okay.

11 MR. LEON: I actually ask that you
12 turn off your video and your microphone
13 to allow counsel to comfortably make a
14 phone call to the Court's chambers.

15 (The following call to Magistrate
16 Judge Steven Tiscione's chambers took
17 place:)

18 UNIDENTIFIED SPEAKER: Good morning,
19 Magistrate Judge Tiscione's chambers.

20 MR. MIZRAHI: Good morning. My name
21 is Jason Mizrahi. I represent a
22 Defendant in a pending matter before
23 Magistrate Judge Tiscione.

24 I'm calling in regards to a
25 deposition that's currently proceeding.

1 We've run into an issue with respect to
2 attorney for Plaintiff coaching his
3 client. I'd like to just brief --

4 UNIDENTIFIED SPEAKER: Okay. I'm
5 going to need your --

6 MR. MIZRAHI: -- the
7 issue --

8 UNIDENTIFIED SPEAKER: Okay. Stop
9 talking, stop talking.

10 I'm going to need your phone number
11 where you can be reached and I can have
12 the Judge get back to you.

13 MR. MIZRAHI: Okay. My phone number
14 is XXX-XXX-XXXX.

15 UNIDENTIFIED SPEAKER: Do you have a
16 court reporter present?

17 MR. MIZRAHI: Yes.

18 UNIDENTIFIED SPEAKER: Is there
19 speakerphone capability?

20 MR. MIZRAHI: Yes.

21 UNIDENTIFIED SPEAKER: And what is
22 the docket number on the case?

23 MR. MIZRAHI: The docket number is
24 17-cv-06127.

25 UNIDENTIFIED SPEAKER: Okay. I'll

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1 have the Judge get back to you shortly.

2 Thank you.

3 MR. MIZRAHI: Thank you.

4 (The call was concluded.)

5 MR. LEON: So we're going to wait or
6 do you want to proceed?

7 MR. MIZRAHI: We'll proceed.

8 MR. LEON: Okay. (Speaking
9 Spanish.) I'm asking him to put on the
10 video and the sound.

11 BY MR. LEON:

12 Q. We want to make sure that the
13 deposition testimony that you're giving today
14 is accurate.

15 A. Okay.

16 Q. To make sure that it's accurate, we
17 need to make sure that all of your responses
18 are being given from you directly. What that
19 means is, you're not allowed to be coached from
20 your attorney or from anybody else who's in the
21 room with you about what to say.

22 MR. LEON: Objection to the form of
23 the question or to the statement.

24 Q. Do you understand, Carlos?

25 A. Yes.

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1 MR. LEON: I would also ask, Madam
2 Translator, can you also translate my
3 objections for my client, as well, so he
4 can hear them?

5 THE INTERPRETER: I'm going to beg
6 you that, please, give me the instruction
7 if he can answer or not, because --

8 MR. LEON: Definitely.

9 THE INTERPRETER: Absolutely. No
10 problem.

11 MR. LEON: Thank you.

12 MR. MIZRAHI: He's going to answer
13 no matter what, just so you know.

14 MR. LEON: Objection to that
15 willfully inaccurate statement. My
16 client will respond subject to any
17 objections.

18 Thank you, Jason. Proceed with your
19 deposition.

20 Q. Carlos, is there anybody else in the
21 room with you right now?

22 A. No.

23 Q. Was there anyone in the room with
24 you a moment ago?

25 MR. LEON: Objection. Just -- the

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1 translation --

2 THE INTERPRETER: I'm sorry. Could
3 you repeat that, Mr. Jason? And can you
4 focus your camera? I can see only your
5 chest.

6 Q. Carlos, is there anybody else in the
7 room with you right now?

8 MR. LEON: Objection, asked and
9 answered. You may respond.

10 I'm sorry. Can you please translate
11 all of my objection, not just the last
12 part?

13 MR. MIZRAHI: You don't have to
14 translate his objections, Christina.

15 MR. LEON: Well -- I'm sorry. I'm
16 sorry. Okay. So, now you're creating
17 problems.

18 Yes, if I make the request she will
19 have to do that, respectfully to her,
20 because my client has an interpreter
21 here. It's not fair that he doesn't get
22 to hear my objection if I direct him not
23 to answer.

24 MR. MIZRAHI: But, all of your
25 objections should be directed to the

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1 court reporter. None of your objections
2 should be directed to your client. Your
3 client should have no need --

4 MR. LEON: Jason, if I want to
5 direct my client not to respond to a
6 question, I have that right, just like
7 you did during your client's deposition.

8 So, I'm absolutely asking the
9 translator to translate my objections.
10 If you want to continue wasting time,
11 this is on you.

12 MR. MIZRAHI: (Inaudible) not to
13 respond. It's past that. You're not
14 allowed to coach your client.

15 MR. LEON: Okay. Madam Translator,
16 I'm going to respectfully ask -- and
17 you've done this before. I'm sure you
18 know what the answer is.

19 I'm respectfully asking that you
20 translate my objection and, you know,
21 what I say with that objection, which is
22 short and simple. It's "Objection,"
23 this, "You may respond." That's it. Or
24 "You can't respond." Simple as that.

25 I'm not asking you to translate

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1 every last word I'm saying right now to
2 Mr. Mizrahi, because Mr. Mizrahi causes
3 me to say so many things to him because
4 he's frequently wrong, so I want to make
5 sure that my client understands the
6 objection.

7 Jason, proceed with your deposition,
8 because you're delaying it.

9 Q. Carlos, is your daughter in the room
10 with you right now?

11 MR. LEON: Objection, asked and
12 answered. You may answer again,
13 Mr. Chincha.

14 THE WITNESS: No.

15 Q. Is there anybody else in the room
16 with you right now?

17 MR. LEON: Objection, asked and
18 answered. You may respond again.

19 Q. Carlos, a moment ago your
20 attorney --

21 MR. LEON: Are you withdrawing the
22 question, Jason?

23 Q. Carlos, a moment ago your --

24 MR. LEON: Jason. Jason. Are you
25 withdrawing the question?

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1 Q. Carlos, a moment ago your attorney
2 stated that your daughter would be available to
3 help with technology. Is that the case?

4 MR. LEON: Objection, compound
5 question. You may respond.

6 THE WITNESS: She's near.

7 Q. Can you please bring her in, please?

8 MR. LEON: Objection. Objection.

9 No. You're not -- your deposition
10 doesn't allow you to bring someone in or
11 have him do stuff. Ask him a question
12 and he'll answer your question.

13 Q. Is your daughter there, Mr. Chincha?

14 MR. LEON: Okay. Objection, asked
15 and answered. This is the last time I'm
16 having my client answer this question.

17 Please translate the question, Madam
18 Translator.

19 THE WITNESS: No.

20 Q. Is she in the other room?

21 A. Yes.

22 Q. Can you please ask her to come in?

23 MR. LEON: Objection. Objection.

24 You can ask him questions, but you're not
25 going to ask him to go do physical feats

1 like going to bring someone in. You're
2 going to ask him questions --

3 This can be cleared up on the record
4 between counsel if you need it. This is
5 not an appropriate way to proceed here,
6 Jason.

7 So, no. He's not going to go get
8 her, you have to ask him questions and
9 he'll answer truthfully, to the best of
10 his ability, subject to any objections.

11 MR. MIZRAHI: Toni, Madam Court
12 Reporter, could you please star Plaintiff
13 counsel's response to my last question?

14 MR. LEON: And you can star it and I
15 can supplement it by simply saying, my
16 position is, Jason, you can ask him
17 questions -- no, Jason. You can put your
18 hand up all you want; I'm going to
19 finish.

20 You can ask him the questions that
21 you want to ask him, but you're not going
22 to be ordering him to go do the duties
23 that you want him to do, go bring someone
24 from the other room, bring them out.

25 If you want to clarify the

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1 daughter's role, I've already done that.
2 You're wasting time asking questions
3 about that. Make your statement on the
4 record if you need to make it and ask him
5 questions.

6 MR. LEON: Madam Court Reporter, can
7 you please confirm that the response has
8 been starred?

9 THE REPORTER: Yes. I marked it.

10 Yes.

11 Q. Carlos, can you please ask your
12 daughter to come into the room?

13 MR. LEON: Okay. Objection. Jason,
14 you literally just heard what I said.

15 If there's something that you want,
16 ask me and I can have it done. Don't ask
17 him to go bring someone from a different
18 room. He's not here to obey orders to go
19 do something in a different room.

20 If you want me to have his daughter
21 come in, I can try and contact her, have
22 her come in, but she's not answering
23 questions under oath; she's not under
24 oath, she's simply --

25 You said you didn't want her in the

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1 room, my client's answered that she's not
2 in the room. What more do you want?

3 Put your statement on the record and
4 I can ensure that it will be followed to
5 the extent that it's a reasonable
6 request.

7 Q. Carlos, if I ask you a question,
8 please answer the question.

9 MR. LEON: Wait for a question,
10 Carlos. Wait for a question.

11 Q. Carlos, can you please ask your
12 daughter to come into this room?

13 MR. LEON: Objection. I am
14 directing you -- you can respond to his
15 question, but you do not need to go do
16 anything.

17 Let the record reflect that there's
18 some sounds being made where it sounds
19 like someone is entering the room.

20 MS. SANCHEZ: What do you need?

21 MR. MIZRAHI: Hello?

22 MS. SANCHEZ: Yes?

23 MR. MIZRAHI: Hi. My name is Jason.

24 MR. LEON: I'm sorry. I'm going to
25 object to this. She's not under oath.

1 So, make your statement for the record,
2 Jason, and we will comply to the best of
3 our ability.

4 She's not under oath here, she's not
5 being questioned here, she's free to walk
6 up and leave if she wants to.

7 So, I'm asking you, if you want to
8 make a statement like you don't want her
9 to coach him, which she's never going to,
10 make your statement on the record. I
11 believe you already have. That's it.
12 Please, let's stop wasting time asking
13 questions --

14 MR. MIZRAHI: I'm going to ask you
15 to please stop speaking out of line.
16 You're only limited to giving objections
17 as to form and privilege. I'm going to
18 ask you again to stop coaching your
19 client and whoever --

20 MR. LEON: I'm sorry, I'm sorry.
21 Are you saying that his daughter's my
22 client? Is that what you're saying?

23 MR. MIZRAHI: No. That's not what
24 I'm saying.

25 MR. LEON: I'm confused by your

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1 argument and its legal basis. Please
2 explain it to me so I --

3 MR. MIZRAHI: I understand that
4 you're available today to assist with
5 some technology; is that correct?

6 MS. SANCHEZ: Yes.

7 MR. MIZRAHI: Okay. So, I'd like
8 your assistance to pull up some exhibits
9 that we will be introducing into
10 evidence.

11 MS. SANCHEZ: Okay.

12 MR. MIZRAHI: I'm sharing these
13 exhibits through the Zoom chat. I'm
14 sharing them right now, so if you could
15 just please confirm that you have them
16 pulled up, that would be helpful.

17 MR. LEON: As you do that, Shirley,
18 I just want to say, in the future, Jason,
19 you could have just said that you needed
20 her for an exhibit and that would have
21 been all that we needed to do.

22 So, please, in the future just ask
23 and it will be --

24 MR. MIZRAHI: This is the last time
25 I'm going to tell you --

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1 MR. LEON: Jason, you can threaten
2 all you want. I'm simply saying, in the
3 future please just ask me to bring her in
4 so that she can take care of the
5 exhibits. That's all you had to say.

6 Now proceed with your questions.

7 MR. MIZRAHI: Can you please confirm
8 the documents that I have sent you, if
9 you can just confirm exactly what you
10 have in front of you.

11 MS. SANCHEZ: Okay. It says
12 Exhibit A, Exhibit B and Exhibit C and D.

13 MR. MIZRAHI: Can you please pull
14 each of those documents up individually
15 so you can see them?

16 MS. SANCHEZ: Okay.

17 MR. LEON: Shirley, as you're doing
18 that, I'd just like to object that, just
19 because those documents are opened up
20 does not necessarily mean that she will
21 not be needed throughout the deposition.
22 I'd like to note that for the record that
23 we may still need her.

24 Proceed with your questions or
25 statements, I guess.

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1 MS. SANCHEZ: Yeah. They're open.

2 MR. MIZRAHI: Your client didn't
3 make one single indication that he would
4 have any issues pulling any documents up.
5 You're improperly coaching your client.

6 MR. LEON: And that's why I made the
7 statement at the beginning of this
8 deposition, Jason. That's why he didn't
9 need to do it, because you didn't ask him
10 the questions, and I made the statement
11 on the record before you asked him the
12 questions.

13 Please, Shirley, if you could please
14 open up those documents, as Counsel's
15 requested.

16 MS. SANCHEZ: Yeah. I pulled them
17 up already.

18 MR. MIZRAHI: Louis, I'm going to
19 ask you again, stop directing your client
20 and stop directing whoever else is in the
21 room. You're --

22 MR. LEON: Wait, Jason. Wait,
23 Jason. I'm not talking to the Witness,
24 Jason. I'm talking to the same person
25 you're talking to about exhibits.

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1 MR. MIZRAHI: -- stop coaching -

2 MR. LEON: Jason, I'm not talking to
3 my witness. Jason, I'm not coaching my
4 witness, I'm talking to the person who's
5 opening up the exhibits, the same person
6 you're taking to.

7 Shirley, please make sure those
8 documents are opened up, as Defense
9 counsel has requested.

10 MS. SANCHEZ: They are open.

11 MS. MIZRAHI: Shirley, while you're
12 here, I'd just like to let you know that
13 your presence here is only going to be
14 limited to assisting with technology on
15 an as-needed basis.

16 MS. SANCHEZ: Yes. I understand
17 that.

18 MR. MIZRAHI: You're prohibited from
19 being present at the deposition for any
20 other purpose, especially to guide your
21 father in answering questions.

22 MS. SANCHEZ: I understand that.

23 Q. Carlos, are you currently taking any
24 prescription medications?

25 A. Yes.

1 Q. What medications are you currently
2 taking?

3 A. For diabetes, for blood pressure and
4 cholesterol.

5 Q. Will any of these medications affect
6 your ability to testify truthfully today?

7 A. No.

8 Q. Is there any reason why you wouldn't
9 be able to testify truthfully here today?

10 A. No.

11 Q. Mr. Chincha, how did you prepare for
12 this deposition?

13 A. I prepared with my attorney for
14 45 minutes.

15 Q. Did you and your attorney review any
16 paperwork?

17 MR. LEON: Objection to the form.

18 You may respond to that question.

19 THE WITNESS: Yes, with my
20 attorneys.

21 Q. Carlos, did you and your attorney
22 review any paperwork to prepare for the
23 deposition?

24 MR. LEON: Objection, asked and
25 answered. You may respond.

1 THE WITNESS: Yes.

2 Q. What paperwork did you and your
3 attorney review?

4 A. Exhibit A, B, C, D.

5 MR. LEON: I'm just instructing
6 Mr. Chincha to respond in Spanish so that
7 the translator can translate correctly.

8 MR. MIZRAHI: Don't direct your
9 client --

10 MR. LEON: Jason. Jason. Right now
11 I'm indifferent to what your position is
12 on this.

13 Please, Madam Translator, can you
14 tell my client to respond in Spanish so
15 that you, the translator, have an easier
16 time explaining the testimony.

17 THE INTERPRETER: (Complies.)

18 THE WITNESS: Okay. The Complaint
19 and Exhibits A, B, C and D.

20 Q. Carlos, besides the Complaint and
21 besides Exhibits A, B, C and D, which were
22 uploaded to you directly a moment ago, did you
23 review any other paperwork to prepare for this
24 deposition?

25 MR. LEON: Objection to the form of

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1 the question. You may respond.

2 I'm sorry. Madam Translator, can
3 you please translate my objection and my
4 instruction to my client.

5 THE WITNESS: No.

6 Q. Carlos, can you please spell your
7 full name for the record?

8 A. Carlos Chincha.

9 THE INTERPRETER: Court reporter --
10 Toni, do you want the spelling or --

11 MR. LEON: I -- I'm sorry. I would
12 rather allow the attorney to ask that
13 question.

14 THE INTERPRETER: Okay.

15 Q. Carlos, can you please spell your
16 full name?

17 A. C-A-R-L-O-S, Carlos; C-H-I-N-C-H-A,
18 Chincha.

19 Q. Carlos, when is your birthday?

20 A. June 20, 1953.

21 Q. Carlos, where were you born?

22 A. Peru.

23 Q. Which city?

24 A. Lima.

25 Q. Carlos, what is your current

1 address?

2 MR. LEON: Objection. Do not
3 respond to that, but please translate the
4 question. If you want the reason, I'll
5 give it to; if not, please proceed with
6 your question.

7 MR. MIZRAHI: What's the basis for
8 your instructing your client not to
9 respond to that question?

10 MR. LEON: Now that you ask, I'll
11 gladly explain. It's irrelevant, it's
12 meant to harass him and it's private,
13 confidential information that has no
14 bearing in this case.

15 And we're concerned for reasons that
16 we would gladly bring up in a phone call
17 with Judge Tiscione about concerns
18 relating to immigration status and what
19 could happen to my client if he gives the
20 exact address of where he lives.

21 There's no relevance of where he
22 currently lives to this lawsuit. That is
23 the basis, among other things, for
24 directing him not to respond to that
25 question.

1 If you have something I should
2 consider, I will gladly consider it and
3 respond.

4 MR. MIZRAHI: We'll note your
5 objection and we'll raise it on the phone
6 call with Judge Tiscione.

7 MR. LEON: Sure.

8 Q. Carlos, how long have you lived at
9 your current address?

10 A. Around seven months.

11 Q. Where were you living previously?

12 MR. LEON: Objection. You may
13 respond.

14 THE WITNESS: In Queens.

15 Q. What was the address of your last
16 residence?

17 MR. LEON: Objection to the form of
18 the question. You may respond.

19 THE WITNESS: In Patel's building.

20 Q. Mr. Chincha, when did you immigrate
21 to America?

22 A. I don't remember, but I would say
23 about 27, 28 years ago.

24 Q. Can you tell me about how you came
25 to America?

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1 MR. LEON: Ooh. Objection. Do not
2 respond. You may translate the question.

3 I'll gladly explain to you why.

4 Immigration status, that's the concern.

5 Q. Carlos, how did you immigrate to
6 America?

7 MR. LEON: Objection to form, but
8 also directing the client not to respond
9 to that question. Same reason.

10 MR. MIZRAHI: For the record, can
11 you please articulate your basis for
12 instructing your client not to respond to
13 that question?

14 MR. LEON: So, in case you paused
15 sound a minute ago, I will say it again:

16 You're asking him how he immigrated
17 to the United States, which has several
18 implications of how immigrants get into
19 this country. That has to do with
20 immigration status, which you, an
21 employment attorney, should know, is not
22 permissible in this circuit.

23 So, I'm directing my client not to
24 respond to that question, because it goes
25 to his immigration status.

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1 Q. Carlos, how old were you when you
2 immigrated to America?

3 A. Forty years old.

4 Q. Carlos, why did you immigrate to
5 America?

6 A. Because I wanted to get better.

7 Q. What do you mean by that?

8 A. The conditions in Peru were very
9 bad.

10 Q. Carlos, when you immigrated here did
11 you come by yourself or with anybody else?

12 MR. LEON: Objection. Respond to
13 that question, but without giving any
14 details regarding immigration status --
15 about immigration status.

16 THE WITNESS: Alone.

17 Q. Mr. Chincha, have you ever been
18 married?

19 A. Always.

20 Q. How many times have you been
21 married?

22 MR. LEON: Objection, relevance.

23 You may respond.

24 THE WITNESS: Only once.

25 Q. Do you recall, when did you get

1 married?

2 MR. LEON: Objection, relevance.

3 You can answer. You may respond.

4 THE WITNESS: Honestly, I don't
5 remember the date, but I would say
6 around -- more than 40 years.

7 Q. Do you have any children?

8 MR. LEON: Objection. You may
9 respond.

10 THE WITNESS: Yes.

11 Q. How many children do you have?

12 MR. LEON: Objection, relevance.

13 THE WITNESS: I have five boys and
14 one daughter.

15 MR. LEON: I'm not sure that's what
16 he said. I'd like to object that that's
17 not what he said in Spanish.

18 THE INTERPRETER: I'm sorry.

19 Interpreter was wrong and attorney was
20 right. So, two boys and one girl.

21 MR. MIZRAHI: I'm going to ask you
22 again to stop coaching your client.

23 MR. LEON: Jason, I wasn't coaching,
24 I actually spoke to the translator.

25 Madam Translator, is that correct

1 that I only spoke to you --

2 THE INTERPRETER: He was correcting
3 me.

4 MR. LEON: Thank you.

5 MR. MIZRAHI: And I'm going to ask
6 you again to stop speaking out of line.

7 MR. LEON: Jason, I don't know what
8 "speaking out of line" means, because
9 we're not, like -- I don't know what that
10 means. We're not friends or anything, so
11 I don't know what "out of line" means.

12 But, just let's continue asking
13 questions, please.

14 MR. MIZRAHI: Well, what that means,
15 Louis, is that any speaking objection
16 that you have is limited to objection as
17 to privilege and objection as to a form
18 of a question.

19 MR. LEON: Where did you learn that?

20 MR. MIZRAHI: You are not allowed to
21 articulate anything --

22 MR. LEON: Did you learn that at the
23 last deposition, Jason? Because, it
24 sounds like the Judge had to tell you
25 some of these things at the last

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1 deposition.

2 And actually, the Judge said that we
3 could object -- no, no, Jason. You
4 continue interrupting me, we're going to
5 continue doing this.

6 The Judge said that we can object,
7 give our quick statement and then direct
8 the client to respond or not respond and
9 that's it. And that's what I've been
10 doing. I'm in compliance with the
11 Judge's rules.

12 But, I'm sorry. As you know, I'll
13 say this for the record, I am a native
14 Spanish speaker, I'm a son of Hispanic
15 immigrants.

16 The translator, as anyone, human
17 error, got a part of the translation
18 wrong, she just confirmed that she got it
19 wrong, so I put it on the record.

20 You may proceed, Jason.

21 MR. MIZRAHI: Louis, please be
22 quiet.

23 MR. LEON: No. Jason, please don't
24 tell me to please be quiet or shut me
25 down that way, just continue with your

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1 deposition. We're equals, I'm not your
2 subordinate. Go on. Shame on you.

3 Q. Carlos, have you ever gotten
4 divorced?

5 MR. LEON: Objection, relevance.

6 And this is the last question on this
7 sort of thing I'm going to allow you to
8 be asking, because I don't see the
9 relevance and it sounds like annoying and
10 harassing. But, my client can respond to
11 that question.

12 MR. MIZRAHI: Christina?

13 THE INTERPRETER: Yes, sir.

14 MR. MIZRAHI: Please stop
15 translating his objections until we get
16 the Judge on the phone call --

17 MR. LEON: Jason, that's not how
18 this works. You might be paying for the
19 transcript, you might be paying for the
20 translator, but you do not get to dictate
21 what they take down and what they don't
22 take down if I'm speaking and I'm
23 saying --

24 MR. MIZRAHI: (Unintelligible.)

25 MR. LEON: I absolutely have the

1 right -- Jason. No, no, no. Jason.

2 Jason. Did you bring this up during the
3 deposition of your client, who
4 understands English very well, or kind
5 of, was able to hear your objections and
6 your directions to him. My client has
7 that same right.

8 Don't instruct the translator to not
9 do her function. Shame on you. Go on.

10 Q. Carlos, have you ever gotten
11 divorced?

12 MR. LEON: Same objection.

13 Irrelevant, harassing. But, you may
14 respond.

15 THE WITNESS: No.

16 Q. Carlos, have you ever been arrested?

17 MR. LEON: Objection as to
18 relevance. I'm going to need a second to
19 ascertain whether there's a privilege
20 that needs to be interposed. Give me a
21 second, Jason, while I think.

22 Q. Carlos, the question is whether or
23 not --

24 MR. LEON: No, no, no. Jason.

25 Jason. No. No. No. I'm considering

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1 right now if there's a privilege I should
2 be making. Give me -- it's literally
3 been three seconds. Hold on. Stop
4 proceeding forward with the questions.

5 I'm going to let you ask this one
6 question about potential criminal
7 history, but it's irrelevant and, in
8 conjunction with all your other
9 questions, it's harassing.

10 So, I'm going to direct my client to
11 respond to your question, but that's...

12 THE WITNESS: No.

13 Q. Have you ever been convicted of a
14 crime?

15 MR. LEON: Okay. This is, in fact,
16 the last question I will let you ask him
17 about his criminal history. I gave you
18 some leeway, he can respond to this, but,
19 after that, no more questions about
20 criminal history, because it's not
21 relevant and it's harassing.

22 THE WITNESS: No.

23 Q. Carlos, besides this lawsuit have
24 you ever been involved in any other legal
25 claims or lawsuits?

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1 MR. LEON: Objection to the form of
2 the question --

3 MR. MIZRAHI: I'm getting a phone
4 call from the Court, okay?

5 MR. LEON: Okay. Great.

6 Can you please ask your daughter to
7 turn off the video and the mic, please?

8 (The following call with Magistrate
9 Judge Steven Tiscione took place:)

10 MR. MIZRAHI: Your Honor, you're
11 currently in the deposition with the
12 court reporter. Is that okay?

13 THE COURT: That's fine.

14 MR. MIZRAHI: You're on speakerphone
15 right now and you're joined by opposing
16 counsel as well as the court reporter.

17 We're calling you this morning,
18 Your Honor, in connection with the
19 deposition in the matter of Chincha v.
20 Patel.

21 We're currently taking Plaintiff's
22 deposition and we're running into two
23 issues with respect to Plaintiff's
24 counsel.

25 The first issue is, Plaintiff's

1 counsel is impermissibly coaching his
2 client on what to say.

3 Multiple times during the deposition
4 he has directed his client to testify in
5 a specific language before the client has
6 had an opportunity to respond.

7 He has directed his client not to
8 answer questions related to basic
9 biographical information on the basis of
10 relevance.

11 He has impermissibly spoken and
12 coached his client related to answers to
13 questions before his client has had an
14 opportunity to respond.

15 And secondly, he has directed his
16 client's daughter to be present in the
17 room and is directing his client's
18 daughter to participate in the
19 deposition.

20 I'd like to make it clear that any
21 basis for her being in the room hasn't
22 been established. His client had not
23 requested any assistance from his
24 daughter, his client didn't request any
25 assistance from somebody to be present.

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1 So, we simply request that,
2 Your Honor, number one, direct
3 Plaintiff's counsel to refrain from
4 improper speaking objections. Any
5 speaking objections that he has must be
6 limited to privilege or to form.

7 We'd respectfully ask Your Honor to
8 direct Plaintiff's counsel to refrain
9 from coaching his client and we would
10 respectfully ask Your Honor to refrain
11 from directing client's daughter to
12 participate in this deposition.

13 MR. LEON: Your Honor, can I quickly
14 respond?

15 THE COURT: Yes.

16 MR. LEON: I apologize to Your Honor
17 that we're yet again in another phone
18 call with Your Honor regarding what
19 should otherwise be a simple deposition.

20 Let me start with the simplest
21 thing. The daughter's role, contrary to
22 what Defense counsel said, I'm not
23 instructing her to participate in the
24 lawsuit in any way that would be
25 improper.

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1 I stated during our last conference,
2 Your Honor, that my client is not
3 technologically savvy. His answer to the
4 question, "Do you have an Apple product,"
5 is, "Is that a type of fruit?" He
6 doesn't know how to handle this.

7 And so, I told Mr. Mizrahi before we
8 went on the record, at length, that his
9 daughter would be readily available
10 there, would be in the room to the extent
11 that an exhibit needed to be opened or
12 there was some issue, because
13 Mr. Mizrahi's uploading exhibits onto the
14 Zoom function. If my client accidentally
15 X's out, then those documents are not
16 available to him.

17 And there's many glitches that I,
18 someone who knows how to use technology,
19 have experienced and messed up and have
20 had hours' worth of delays in mediations
21 and depositions.

22 I'm simply trying to ensure that
23 this individual, his daughter, who, for
24 the record, is no longer in the room, has
25 since then been instructed to go into a

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1 different room, has remained in a
2 different room and only came back when
3 Mr. Mizrahi ordered her to come back, as
4 if she were a witness in this case.

5 So, we're not using her improperly.
6 I've stated on the record that his
7 daughter is not participating, is not
8 coaching. She has acknowledged that,
9 she's helped out already with exhibits.

10 My client, simply put, needs this.
11 This is not a luxury, this is a real
12 need. And she knows and she's
13 acknowledged that she's not
14 participating. She's not coaching him in
15 any shape or form.

16 So, as to that, I told Defense
17 counsel and he tried to not let me put
18 those statement on the record. And when
19 I put it on the record he said that I'm
20 making impermissible statements.

21 The other thing, the other part of
22 what Defense counsel lumped together with
23 no examples at all is that I'm somehow
24 making speaking objections and speaking
25 free for all.

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1 I should just give Your Honor
2 context that Defense counsel noticed the
3 deposition for a remote deposition, no
4 recording whatsoever.

5 At the start of this deposition, in
6 bad faith, without giving me notice,
7 without telling me he was going to do it,
8 he began recording the deposition.

9 When I pointed out to Mr. Mizrahi
10 that his last deposition notice did not
11 show a video recording, that I had not
12 been able to properly prepare my client
13 for such a deposition or object to one,
14 he soon thereafter decided to not do
15 video recording. It's ever since been
16 X'd out.

17 So, at the beginning of the
18 deposition I said I'd like to put this on
19 the record, I'd like to make sure that
20 we're on the same page, that nothing's
21 being recorded and that, to the extent
22 that anything gets inadvertently
23 recorded, you're not going to use that or
24 rely upon it in any shape or form for
25 trial.

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1 Mr. Mizrahi was unhappy that I would
2 make any of those statements. He did not
3 want me to able to do that.

4 As to specific questions,
5 Mr. Mizrahi has gone so far to tell the
6 translator -- my client's a Spanish
7 speaker who is using a translator. I
8 speak Spanish as well, but I am not
9 engaging in speaking with my client in
10 Spanish, I'm doing it through the
11 translator.

12 Mr. Mizrahi has unilaterally told
13 the translator wrongfully that she is not
14 to translate my objections or directions
15 for him to not answer.

16 Mr. Mizrahi seemingly wants my
17 client to be ambushed. And if I'm
18 telling him not to answer a question, he
19 should be able to understand my
20 instruction and should not answer.

21 Mr. Mizrahi has done that, even
22 though his client, who understands
23 English quite well, reads and writes it,
24 at least on an average level, had the
25 privilege of having his counsel defend

1 him and he could hear his objections.

2 But, he wants to keep that from my
3 client.

4 And as to the specific points of
5 questions I directed my client not to
6 answer, they've only been on questions
7 that there -- it is harassing, it is
8 annoying, there's no possible relevance
9 and there are some serious concerns.

10 For example, Your Honor is familiar
11 with the fact that in the Second Circuit
12 it is outright improper to ask a client
13 about his immigration status, how he got
14 into the country, and Mr. Mizrahi has
15 gone so far to ask him, at least two or
16 three time repeatedly, after I told him,
17 "Don't answer that question" to my
18 client, "How did you arrive at this
19 country?"

20 "How did you get in" was pretty much
21 the question or the implication of it,
22 and I've advised him that I'm directing
23 my client not to respond to that question
24 because it relates to his immigration
25 status.

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1 And there's so many related
2 questions like that. Mr. Mizrahi has
3 been unable to cite a single example in
4 which I supposedly have been making
5 speaking objections.

6 I took what Your Honor told us
7 during the last phone call to heart at
8 the last deposition. I object, I state
9 the basis of the objection quickly in a
10 couple of words and then I tell my client
11 "Respond to the question" so there's no
12 confusion or I say "Don't respond to the
13 question" and I provide the basis to
14 Counsel.

15 There's nothing improper about what
16 we're doing, there's no evidence that
17 we're doing anything improper and I'm
18 simply trying to leave a clear record for
19 this deposition. That's it, Your Honor.

20 MR. MIZRAHI: Your Honor, if I may
21 quickly respond, I promise my response
22 will be quick.

23 THE COURT: Go ahead.

24 MR. MIZRAHI: I'd just like to point
25 out that Mr. Leon is making improper

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1 objections on relevance and then he's
2 proceeding to --

3 THE COURT: That's not a relevance
4 objection. If you're asking questions on
5 his immigration status, that's
6 prohibited.

7 MR. MIZRAHI: I'm not asking him
8 questions about his immigration status,
9 Your Honor.

10 THE COURT: Asking him how he got
11 into the country is an improper question.
12 You know that. He shouldn't be answering
13 it.

14 MR. MIZRAHI: Your Honor, I asked
15 him what his current address was and I
16 asked him how he immigrated to America.

17 And the purpose of the question is
18 directly relevant as to the manner in
19 which that this employee had voluntarily
20 wished to have gotten paid. It directly
21 bears on the manner in which he got paid
22 during the course of his employment.

23 We're not using this testimony for
24 any improper purpose. We're not using
25 this testimony with regards to his

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1 immigration status. We're simply using
2 it because it's directly relevant to the
3 crucial issue here of how he got paid and
4 the manner in which he voluntarily wished
5 to have gotten paid.

6 MR. LEON: Your Honor, I'm sorry to
7 just reply, but, respectfully, that
8 doesn't really doesn't make sense. I'm
9 now sure how he got into the country --

10 THE COURT: I don't understand. Is
11 he claiming he wanted to get paid in a
12 different way?

13 MR. LEON: No. Your Honor, there's
14 no dispute in this case about what my
15 client was paid or how he was paid. I
16 questioned Defendant for seven hours a
17 week or a week and a half ago and we seem
18 to all be on the same page, at least
19 about how he was being paid and how much
20 he was being paid.

21 So, to act now like that has any
22 relevance on this, it's completely wrong
23 and deliberately misleading. There's no
24 reason to know this other than to
25 ascertain his immigration status.

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1 And if I could add where this
2 concern comes from, also, reading
3 Mr. Patel, the Defendant's, deposition,
4 he stated that the reason why --

5 I mean, among other things, like
6 admitting to defrauding the government
7 and other admissions he made under oath,
8 he stated that my client did not give him
9 a Social Security number because, quote,
10 unquote, he doesn't have one, and
11 implying that he's illegally here.

12 So, clearly there's a belief that
13 he's illegal, which we're not going to
14 affirm or deny, because it's prejudicial
15 to our client, but clearly that's where
16 these questions were coming from.

17 "Why did you come to the United
18 States?" "How did you come to the United
19 States?" "Where do you currently live?"
20 Even though my client just told him that
21 he has not -- he's never lived in the
22 location where he currently lives at any
23 point in time while he worked for
24 Defendant and there's no dispute that my
25 client lived at the building the entire

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1 time that he worked there.

2 So, there's no reason to ascertain
3 these things other than -- and if I'm
4 being honest, my concern is that this
5 information is going to be used for some
6 improper purpose -- I'm not saying by
7 Counsel.

8 But, Defendant made more than clear
9 his hostility towards my client and
10 implying that he's illegal, then his
11 counsel asking him questions that have to
12 do only about his immigration status.
13 That's just improper.

14 And so, we're directing the client
15 not to respond to those questions.

16 THE COURT: All right. Look. As to
17 the initial matter, his daughter can
18 provide technical assistance as long as
19 she's not participating in the actual
20 deposition itself.

21 So, if he needs her in the room to
22 help with the technology, I mean, that's
23 perfectly fine.

24 MR. MIZRAHI: You Honor, we'd ask
25 that she be in front of the camera so we

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1 can see any facial expressions or
2 manners that she's going --

3 MR. LEON: Your Honor, this is --

4 MR. MIZRAHI: We'd like to make sure
5 she's not coaching her father in any way,
6 shape or form.

7 MR. LEON: Your Honor, this is
8 completely unnecessary. Mr. Mizrahi's
9 not mentioned a single instance in which
10 the daughter has even remotely tried to
11 coach the client.

12 And I made that clear on the record.
13 She acknowledged, "I'm not coaching him,
14 I'm not doing this." And now that they
15 have to both share the spotlight and bump
16 into each other, then he's going to say,
17 "Oh, she touched him and that's why he
18 answered the way he answered" --

19 MR. MIZRAHI: (Unintelligible.)
20 THE COURT: I can't hear when
21 everybody's talking at once.

22 You know, this is your deposition.
23 If you want to proceed with somebody who
24 doesn't know what he's doing and can't
25 actually open up documents and, you know,

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1 respond to your questions, you're more
2 than welcome to do that, but don't be
3 surprised if you have a (unintelligible)
4 deposition.

5 She's not a party. I'm not ordering
6 her to do anything. If she wants to
7 provide technical assistance to help you
8 out, that's fine. But I'm not ordering
9 her to appear on camera.

10 If you don't want to use her
11 assistance, then don't use her
12 assistance. And you'll end up with a
13 useless deposition.

14 MR. MIZRAHI: We would just ask
15 Your Honor to respectfully direct
16 opposing counsel to refrain from coaching
17 his client any further.

18 MR. LEON: We're not coaching,
19 Your Honor. There's no proof that
20 there's been coaching.

21 THE COURT: Nothing I've heard to
22 this point suggests to me that he's
23 coaching his client. He is telling his
24 client not to respond to improper
25 questions. So, it's not coaching.

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1 That's called being a lawyer.

2 MR. MIZRAHI: Number one, he's
3 directing his objections to his client,
4 not to the court reporter. If there are
5 any objections that need to be spoken
6 into the record, they should be spoken
7 for the court reporter, not for purposes
8 of coaching his client.

9 He's directing his client to testify
10 in Spanish. If his client understands my
11 questions and if he chooses to answer
12 voluntary in English --

13 THE COURT: No. No. That's not
14 happening. He either does it in Spanish
15 or he does it in English. We're not
16 doing something where it's half in
17 English and half in Spanish. Those come
18 out horrible.

19 You pick a language and you stick
20 with it. You either use the interpreter
21 or you don't. You don't do half and
22 half.

23 MR. LEON: Your Honor, could I just
24 add just one thing about the objections.

25 All I've asked is that the

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1 translator translate my objections and my
2 direction to my client to either respond
3 or not respond. Because, he might not
4 understand a single thing I'm saying
5 about the question that he needs to hear:
6 "Objection, don't respond" or "Respond."

7 THE COURT: The translator should be
8 interpreting everything. There's no
9 reason why the translator shouldn't be
10 interpreting everything.

11 If there's something you need to say
12 outside the presence of the witness, you
13 ask them to leave the room. You don't
14 tell the interpreter not to interpret.

15 MR. MIZRAHI: Thank you for your
16 assistance, Your Honor. We're ready to
17 move forward.

18 THE COURT: All right. Good luck.

19 (The call was concluded.)

20 MR. MIZRAHI: Just for the record,
21 it's 12:04. I'm going to take a quick
22 bathroom break.

23 MR. LEON: Sure.

24 (Recess taken.)

25 (Off-the-record discussion held.)

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1 MR. LEON: Just for the record,
2 we'll take a break at 1:15. That's it.

3 BY MR. MIZRAHI:

4 Q. Carlos, besides this case have you
5 ever been involved in any other lawsuits?

6 MR. LEON: Objection to the form of
7 the question. You may respond.

8 THE WITNESS: No.

9 Q. Carlos, do you have any documents
10 related to your employment with Mr. Patel?

11 MR. LEON: Objection to the form of
12 the question. You may respond.

13 THE WITNESS: No.

14 Q. Carlos, before filing this lawsuit
15 did you give your attorney any documents?

16 THE INTERPRETER: I'm sorry. I
17 didn't hear that very well.

18 Q. Did you give your attorney any
19 documents in connection with filing this
20 lawsuit?

21 MR. LEON: Objection to the form of
22 the question. You may respond without
23 revealing any privileged communications
24 between counsel and client.

25 THE WITNESS: No.

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1 Q. Carlos, did you ever search for any
2 documents pertaining to your relationship with
3 Mr. Patel?

4 MR. LEON: Objection to the form of
5 the question. You may respond.

6 THE WITNESS: No.

7 Q. Carlos, did anybody ever ask you to
8 look for any documents pertaining to your
9 relationship with Mr. Patel?

10 MR. LEON: Objection. Objection.

11 My client can answer, but without
12 breaking attorney-client privilege.

13 THE WITNESS: No.

14 Q. Carlos, do you maintain any records
15 concerning your relationship with Mr. Patel?

16 MR. LEON: Objection to the form of
17 the question. You may respond to that
18 question, Mr. Chincha.

19 THE WITNESS: No.

20 Q. Carlos, did you keep a log of the
21 hours that you worked at the building?

22 MR. LEON: Objection to the form of
23 the question. You may respond to that
24 question.

25 THE WITNESS: No.

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1 Q. Carlos, do you have any utility
2 receipts from when you lived at the building?

3 MR. LEON: Objection to the form of
4 the question. You may respond.

5 THE WITNESS: No.

6 Q. How about any electrical receipts?

7 MR. LEON: Objection -- no. I'm
8 sorry, I'm sorry. That's not what he
9 asked. Counsel just asked about
10 electronic receipts, is the question he
11 asked.

12 Could the court reporter just read
13 back the question?

14 (Record read.)

15 MR. LEON: Electrical, not
16 electronic? Okay. I take that back. I
17 misheard.

18 Objection to the form of the
19 question. You may respond.

20 THE WITNESS: No.

21 Q. Did you ever receive any invoices
22 from Mr. Patel?

23 MR. LEON: Objection to the form of
24 the question. You may respond.

25 THE WITNESS: No.

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1 Q. Carlos, how did you find your
2 attorney?

3 MR. LEON: Objection to the form of
4 that question. You may respond to that
5 question, Mr. Chincha.

6 THE WITNESS: I found it in the
7 local newspaper.

8 Q. What local newspaper?

9 A. Like ads.

10 Q. Do you recall the name of the
11 newspaper?

12 A. No.

13 Q. Was the advertisement in English or
14 in Spanish?

15 MR. LEON: Objection to the form of
16 the question. You may respond.

17 THE WITNESS: Spanish.

18 Q. What did the advertisement say?

19 MR. LEON: Objection to the form of
20 the question. You may respond.

21 THE WITNESS: Repeat the question,
22 please.

23 Q. What did the advertisement say?

24 MR. LEON: Objection to the form of
25 the question. You may respond.

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1 THE WITNESS: Attorneys

2 (unintelligible).

3 Q. Carlos, what is your attorney's
4 name?

5 MR. LEON: Objection to the form of
6 the question. You may respond.

7 THE WITNESS: Louis Pena (phonetic).

8 Q. Carlos, how many times did you meet
9 with your attorney before filing the lawsuit?

10 MR. LEON: Objection. Assumes
11 testimony in evidence, not on the record.
12 You may respond.

13 THE WITNESS: Forty-five to fifty
14 minutes.

15 Q. Forty-five to fifty minutes in one
16 session or more than one session?

17 MR. LEON: Objection to the form of
18 the question. You may respond to that
19 question.

20 THE WITNESS: One session.

21 Q. What made you decide to go with your
22 attorney?

23 MR. LEON: Objection. You may
24 respond to that question, but without
25 revealing any communications between my

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1 office and you, Mr. Chincha. Otherwise,
2 please respond to Mr. Mizrahi.

3 MR. MIZRAHI: Louis, he didn't
4 reveal any information.

5 MR. LEON: Yes, Jason. Thank you
6 for stating the obvious. That's why I'm
7 telling him not to. But, thank you for
8 your contribution.

9 You may respond to the question,
10 Mr. Chincha.

11 THE WITNESS: Because he was abusive
12 and arrogant.

13 Q. Why did you hire your attorney?

14 MR. LEON: Objection. Asked and
15 answered. Please respond without
16 revealing any communications between my
17 office and you, Mr. Chincha. Otherwise,
18 please respond to Mr. Mizrahi's question.

19 THE WITNESS: Because he was
20 arrogant and abusive.

21 Q. Who did you first meet with when you
22 met with your attorneys?

23 MR. LEON: Objection to the form of
24 that question. You may respond.

25 THE WITNESS: With my attorney,

1 Louis Pena.

2 Q. Did you meet with anybody else?

3 MR. LEON: Objection to the form of
4 the question. You may respond.

5 THE WITNESS: No.

6 Q. How many times have you and Louis
7 met?

8 MR. LEON: Objection to the form of
9 the question. You may respond to that
10 question.

11 THE WITNESS: Two or three times.

12 Q. Do you know when the Complaint in
13 this action was filed?

14 MR. LEON: Objection to the form of
15 the question. You may respond to that
16 question.

17 THE WITNESS: The second time.

18 Q. Carlos, I asked if you recall the
19 date when the Complaint in this action was
20 filed.

21 MR. LEON: Objection. Please wait
22 for Counsel to ask a question, then
23 answer.

24 Jason, I think he's waiting for you
25 to ask the question.

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1 Q. Do you recall the date when this
2 Complaint was filed?

3 MR. LEON: Objection to the form of
4 the question. You may respond.

5 THE WITNESS: October 2017.

6 Q. Mr. Chincha, are you currently
7 employed?

8 MR. LEON: Objection, relevance.

9 You may respond.

10 THE WITNESS: No.

11 Q. Carlos, were you employed in 2017?

12 MR. LEON: Objection to the form of
13 the question. You may respond.

14 THE WITNESS: Until September of
15 that year I was with Patel.

16 Q. What about afterwards?

17 MR. LEON: Objection, relevance.

18 You may respond.

19 THE WITNESS: No.

20 Q. Were you employed in 2018?

21 MR. LEON: Objection to the form of
22 that question. You may respond to that
23 question.

24 THE WITNESS: No.

25 Q. What about in 2019?

1 MR. LEON: Objection to the form of
2 that question. You may respond to that
3 question.

4 THE WITNESS: No.

5 Q. What about 2020?

6 MR. LEON: Objection to the form of
7 the question. You may respond to that
8 question.

9 THE WITNESS: No.

10 Q. Have you ever received any
11 government benefits?

12 MR. LEON: Objection. I'm directing
13 my client not to respond to that line of
14 questions. If Mr. Mizrahi would like an
15 explanation, I'll gladly provide it. Do
16 not respond.

17 MR. MIZRAHI: Louis, please execute
18 your basis for refusing to allow your
19 client to respond.

20 MR. LEON: The reason is that, in
21 the Circuit, requests for any government
22 benefits that a client may have received,
23 applied, tried to apply for is an
24 inappropriate line of questions, as a
25 general matter, as you hopefully know,

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1 but certainly I do, as someone who works
2 in New York City, that most if not all
3 government benefits are not possible to
4 be given to people who have a certain
5 documented or undocumented status.

6 We believe it goes to immigration
7 and we believe that it has absolutely
8 nothing to do with this case and it is
9 only being done to harass and annoy my
10 client in this action.

11 Furthermore, and I guess I'd say
12 finally, this is not a discrimination
13 case or disability case, this is a wage
14 and hour case, thus this is just
15 completely improper. That's my basis.

16 MR. MIZRAHI: Do you have a citation
17 for the Second Circuit authority that
18 you're referencing?

19 MR. LEON: No, Jason, not right now
20 in front of me. But, if we want to take
21 some time off and do some research, then
22 maybe you can provide me with your legal
23 basis for asking this question and we can
24 discuss it. It will just eat away at
25 your seven hours, so you let me know what

1 you want to do.

2 Q. Carlos, have you ever applied for
3 government benefits in 2017?

4 MR. LEON: Objection. Do not
5 respond. I think I left my objection
6 superbly clear. And especially if it's
7 concerning a time period during which my
8 client wasn't working for your client,
9 the point is further made.

10 Same objection as last time.

11 Continue, Counselor.

12 Q. Mr. Chincha, have you ever filed
13 taxes in 2017?

14 MR. LEON: Objection. Do not
15 answer. I'm going to make my objection.
16 Do not answer.

17 I will gladly further edify you
18 about why I'm directing my client not to
19 respond, but I presume you already know.

20 Would you like me to elaborate,
21 Counsel? I'll make the decision for you.

22 The basis for that is, as you know
23 and Judge Tiscione just told you an hour,
24 hour and a half ago, that there are
25 certain questions you know are

1 inappropriate; you're an employment
2 litigator, you should know that you can't
3 ask a plaintiff if he's filed taxes.

4 And then, with follow-up questions
5 that would be, well, "Did you have a
6 Social Security?" "Did you have a 1099?"
7 "What's your legal status?"

8 Inappropriate line of questions, all of
9 those.

10 Directing my client not to respond.
11 And you already know you're not allowed
12 to ask that. Please don't continue
13 engaging in questions that you know in
14 good faith you can't ask. Don't answer.

15 Q. Carlos, how have you received income
16 in 2017?

17 MR. LEON: Objection to the form of
18 that question. You may respond to that
19 question.

20 THE WITNESS: I didn't receive
21 anything.

22 Q. What about 2018?

23 MR. LEON: Objection. Objection.
24 I'm directing my client not to respond to
25 that. What income he's made in 2018 has

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1 no relevance to this case and it's only
2 meant to annoy and harass my client.

3 Directing you not to respond,
4 Mr. Chincha.

5 MR. MIZRAHI: For the record,
6 opposing counsel has directed his client
7 not to respond on the basis of relevance,
8 which is a basis you've offered before,
9 right?

10 MR. LEON: Oh. And -- no, no. And
11 annoying and harassing, remember. Don't
12 forget that. I know you forget things
13 sometimes. Don't forget.

14 Q. What about in 2019?

15 MR. LEON: Same objection. Do not
16 respond. Same objection and I'll gladly
17 continue explaining if you require
18 further explanation. I want to work with
19 you in good faith.

20 Q. Carlos, do you have any licenses?

21 MR. LEON: Ooh. Objection. Unless
22 you clarify what you mean by that, I'm
23 not going to let my client respond.
24 Please clarify what you mean.

25 Because, there's a certain type of

1 license I'll let you ask him questions
2 about and there's a different type of
3 license I'm not going to let you ask him
4 questions about.

5 So, please clarify what you mean,
6 otherwise the direction to my client is
7 that he not respond.

8 Do you mean driver's license, by any
9 chance? Is that what you're asking him?

10 Q. Carlos, do you have any licenses?

11 MR. LEON: Carlos, I'm directing you
12 not to respond until Mr. Mizrahi
13 clarifies what he means. Otherwise, it
14 seems to be part and parcel of his other
15 inappropriate line of questions. Do not
16 respond.

17 Q. Carlos, do you have any electrical
18 licenses?

19 MR. LEON: Objection to the form of
20 the question. You may respond.

21 THE WITNESS: I have only basic
22 knowledge.

23 Q. So, do you have any professional
24 licenses?

25 MR. LEON: Objection to the form of

1 the question. And I'm directing my
2 client not to provide any information
3 concerning licenses, driving licenses or
4 residential licenses, but you can
5 otherwise answer Counsel's question.

6 THE WITNESS: No.

7 Q. Carlos, how old are you?

8 A. Sixty-seven years old.

9 Q. Carlos, do you use a cane to walk?

10 MR. LEON: Objection to the form of
11 that question. Mr. Chincha, you may
12 respond to that question.

13 THE WITNESS: Not all the time.

14 Q. How often do you use a cane to walk?

15 MR. LEON: Objection to the form of
16 the question. You may respond to that
17 question.

18 THE WITNESS: When I go out to walk.

19 Q. Besides using a cane when you go out
20 to walk, do you ever use a cane for any other
21 reason?

22 MR. LEON: Objection to the form of
23 the question. You may respond.

24 THE WITNESS: No.

25 Q. Are you currently receiving

1 Social Security benefits?

2 MR. LEON: Jeez, it's like you don't
3 listen. Objection. Do not answer.

4 Mr. Mizrahi, I direct you to my
5 prior objections about government
6 benefits. You're on notice. I repeat it
7 to you. Improper line of questions,
8 irrelevant and -- I'm going to stress
9 this -- it's meant to annoy and harass my
10 client.

11 Do not answer the question, please.

12 Q. Carlos, do you suffer from any
13 health issues?

14 MR. LEON: Objection to the form of
15 the question. You may respond.

16 THE WITNESS: Diabetes.

17 Q. Besides suffering from diabetes, do
18 you suffer from any other health issues?

19 MR. LEON: Objection to the form of
20 that question. You may respond.

21 THE WITNESS: No.

22 Q. Do you suffer from any physical
23 disabilities?

24 MR. LEON: Objection to the form of
25 the question. You may respond.

1 THE WITNESS: Right now I get tired.

2 Q. What do you mean?

3 MR. LEON: Objection to the form of
4 the question. You may respond.

5 THE WITNESS: Depression.

6 Q. How long have you suffered from
7 depression?

8 MR. LEON: You may respond.

9 THE WITNESS: I would say that
10 around six months ago.

11 Q. Do you currently suffer from any
12 other physical disabilities besides getting
13 tired?

14 A. No.

15 Q. Do you have any issues with your
16 back?

17 MR. LEON: Objection to the form of
18 the question. You may respond.

19 THE WITNESS: No.

20 Q. What about with your knees?

21 MR. LEON: Objection to the form of
22 that question. You may respond to that
23 question.

24 THE WITNESS: No.

25 Q. What about with your heart?

1 MR. LEON: Objection to the form of
2 that question. You may respond to that
3 question.

4 THE WITNESS: No.

5 Q. Do you suffer from any eye problems?

6 MR. LEON: Objection to the form of
7 that question. You may respond to that
8 question.

9 THE WITNESS: Yes.

10 Q. What eye problems?

11 A. I have to use drops.

12 Q. For what?

13 A. Because, from the diabetes I suffer
14 from glaucoma.

15 MR. LEON: Objection to the form of
16 the question. He responded already,
17 obviously.

18 Q. Please describe your glaucoma.

19 MR. LEON: Objection to the form of
20 the question. You may respond to that
21 question.

22 THE WITNESS: I went to see the
23 doctor and they injected me, glaucoma.

24 Q. What symptoms do you suffer?

25 MR. LEON: You may respond.

1 THE WITNESS: I had to apply the
2 drops because my vision got low.

3 Q. When you say your vision got low,
4 what do you mean?

5 A. That I see a little blurry.

6 Q. When you say you see a little
7 blurry, can you elaborate?

8 MR. LEON: You may respond.

9 THE WITNESS: The pressure on my eye
10 got high.

11 MR. LEON: I'm sorry. I just want
12 to make a clarification for the record.

13 I would just ask the translator to
14 translate the verb tense in which the
15 question and the answer is given.

16 There's been a couple of instances
17 in which the question is asked in the
18 present or my client responds in the
19 present and the translator is translating
20 in a different tense and vice versa.

21 So, I would just ask the translator
22 to translate consistent with the verb
23 tense that the question and the answer is
24 given in.

25 If you could repeat the question and

1 have the answer responded, because part
2 of if was cut out while his mic was off.

3 So, I think it might make more sense to
4 just start the question and answer over.

5 (Record read.)

6 THE WITNESS: Yes. Can you repeat
7 the question?

8 MR. LEON: Madam Court Reporter,
9 could you please repeat the question?

10 (Record read.)

11 MR. LEON: Objection to the form of
12 the question. You may respond.

13 THE WITNESS: Every eight hours I
14 have to apply the drops.

15 Q. Because you have blurry vision,
16 right?

17 MR. LEON: Objection to the form of
18 the question. Mischaracterizing. You
19 may respond.

20 THE WITNESS: I had to apply them
21 every eight hours because my vision gets
22 blurry.

23 Q. How long have you been suffering
24 from these eye problems?

25 MR. LEON: Objection to the form of

1 the question, mischaracterizing prior
2 testimony. You may respond to that
3 question that you were just asked.

4 THE WITNESS: Now, like a year ago.

5 Q. Carlos, why do you use a cane?

6 MR. LEON: Objection, asked and
7 answered. You may respond to that
8 question again.

9 THE WITNESS: For my balance.

10 Q. Do you have issues with your
11 balance?

12 MR. LEON: You may respond.

13 THE WITNESS: Yes. A little.

14 Q. What issues do you have?

15 MR. LEON: Objection to the form of
16 the question. You may respond.

17 THE WITNESS: I don't have much
18 balance.

19 Q. And how long have you been like
20 that?

21 MR. LEON: Objection to the form of
22 that question. You may respond,
23 Mr. Chincha.

24 THE WITNESS: One year.

25 Q. Have you ever undergone any

1 surgeries?

2 MR. LEON: Objection to the form of
3 the question. You may respond.

4 THE WITNESS: Yes.

5 Q. What surgeries?

6 MR. LEON: Same objection to this
7 line of questions. Objection to the
8 form. You may respond. And I'm sorry.
9 Also objection, relevance. You may
10 respond.

11 THE WITNESS: On my eye, glaucoma.

12 Q. When?

13 MR. LEON: Objection to the form of
14 that question. You may respond to that
15 question.

16 THE WITNESS: April 2015.

17 Q. So, you received the surgery in
18 April of 2015?

19 MR. LEON: Objection to the form of
20 that question. You may respond.

21 THE WITNESS: Yes. April 2015.

22 Q. Before April of 2015 were you
23 receiving any treatment for your glaucoma?

24 MR. LEON: Objection to the form of
25 the question. You may respond to that

1 question.

2 THE WITNESS: No.

3 Q. Where did you receive this
4 treatment?

5 MR. LEON: Objection to the form of
6 the question. You may respond to that
7 question.

8 THE WITNESS: At the hospital.

9 Q. Why did you receive this treatment?

10 MR. LEON: Objection to the form of
11 the question. You may respond.

12 THE WITNESS: I went to receive an
13 examination or check for my vision.

14 Q. How long had you been suffering from
15 vision problems before you received the
16 treatment?

17 MR. LEON: Objection to the form of
18 the question and to the extent that it's
19 mischaracterizing prior testimony. You
20 may respond.

21 THE WITNESS: They checked my vision
22 and they told me that I need the surgery.

23 Q. Carlos, how long have you been
24 suffering from eye problems before undergoing
25 that surgery?

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1 MR. LEON: Objection to the form of
2 that question and to the extent that it
3 mischaracterizes prior testimony. You
4 may respond to that question,
5 Mr. Chincha.

6 THE WITNESS: I didn't have any
7 vision problems.

8 Q. Then why did you get surgery on your
9 eyes?

10 MR. LEON: Objection, asked and
11 answered. You may respond to that
12 question again.

13 THE WITNESS: Because my sugar got
14 high and my vision got erased.

15 Q. When did you start suffering from
16 vision loss?

17 MR. LEON: Objection to the form of
18 that question and to the extent that it
19 mischaracterizes prior testimony. You
20 may respond.

21 THE WITNESS: It was one Monday.

22 Q. Do you remember the month and the
23 year?

24 MR. LEON: Objection to the form of
25 the question. Ambiguous, unclear. You

1 may respond, Mr. Chincha.

2 THE WITNESS: April of '15.

3 Q. Did you have any health issues
4 before April of 2015?

5 MR. LEON: Objection to the form of
6 that question. You may respond to that
7 question.

8 THE WITNESS: Only diabetes.

9 Q. Who treated you for your glaucoma?

10 MR. LEON: Objection to the form of
11 that question. You may respond to that
12 question.

13 THE WITNESS: The eye doctor.

14 Q. What was his name?

15 MR. LEON: Objection to the form of
16 the question. You may respond to that
17 question.

18 THE WITNESS: Honestly, I don't
19 remember.

20 Q. Where was he located?

21 MR. LEON: Objection to the form of
22 the question. You may respond to that
23 question.

24 THE WITNESS: Jamaica Hospital.

25 Q. What was the name of the hospital?

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1 MR. LEON: Objection, asked and
2 answered. Objection to the form. You
3 may respond.

4 THE WITNESS: Queens Hospital Center
5 in Jamaica.

6 Q. Carlos, were you treated at Jamaica
7 Hospital Medical Center?

8 MR. LEON: Objection to the form of
9 the question. You may respond.

10 THE WITNESS: Yes. They told me
11 that -- that I went.

12 Q. Carlos, how long have you been using
13 a cane?

14 MR. LEON: Objection, asked and
15 answered multiple times. Last time he's
16 answering this question. You may
17 respond.

18 THE WITNESS: Recently, about one
19 year ago, I told you.

20 Q. Besides suffering from vision loss,
21 did you suffer from any other health issues in
22 2015?

23 MR. LEON: Objection to the form of
24 that question and to the extent that it's
25 ambiguous. You may respond.

1 THE WITNESS: Yes. I had another
2 surgery.

3 Q. What surgery?

4 MR. LEON: You may respond.

5 THE WITNESS: They gave me a
6 pacemaker.

7 Q. When did you receive that surgery?

8 MR. LEON: Objection to the form of
9 the question. You may respond.

10 THE WITNESS: May 2015.

11 Q. Were you also treated at Jamaica
12 Hospital Medical Center?

13 MR. LEON: Objection to the form of
14 that question. You may respond to that
15 question that Counsel just asked.

16 THE WITNESS: Yes.

17 Q. And why did you receive that
18 surgery?

19 MR. LEON: Objection to the form of
20 the question. You may respond.

21 THE WITNESS: Because I was not able
22 to walk.

23 Q. Prior to getting the surgery, how
24 long were you unable to walk for?

25 MR. LEON: Objection to the form of

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1 that question. Ambiguous. You may
2 respond if you understand it.

3 THE WITNESS: One day.

4 Q. Can you describe to me what
5 happened?

6 MR. LEON: Objection to the form of
7 that ambiguous question. You may respond
8 to that ambiguous question.

9 THE WITNESS: I fainted and I got
10 his care. When I wanted to get up I
11 couldn't lift my legs.

12 Q. Besides the eye surgery and besides
13 the pacemaker surgery, did you receive any
14 other medical treatment in 2015?

15 MR. LEON: Objection to the form of
16 the question. You may respond to that
17 question.

18 THE WITNESS: No.

19 MR. LEON: Before you go on, it's
20 now 1:16. When we resumed we had agreed
21 to take a lunch break at 1:15, so I just
22 wanted to bring that up again.

23 MR. MIZRAHI: Would you like to take
24 that break now?

25 MR. LEON: Yeah, since it's 1:16.

1 (Luncheon recess from 1:16 p.m. to
2 1:54 p.m.)

3 (Replacement interpreter joins
4 deposition.)

5 D E A N M C C O N K E Y ,

6 Spanish Language Interpreter, was
7 thereupon duly sworn on oath to translate
8 faithfully the questions asked and the
9 answers given to the best of his ability.

10 MR. LEON: I'd like to state just
11 one thing on the record.

12 For the translator, I would just
13 respectfully ask that any objections that
14 I make -- I'll keep them as short as
15 possible -- as well as any directions to
16 answer or not answer the question, that
17 they be translated.

18 We consulted the Judge and the Judge
19 is onboard with that instruction.

20 And I just want to, so that I don't
21 talk directly to my client, if you can
22 just advise my client that you're the
23 translator that will be taking over from
24 the other translator from here on.

25 THE INTERPRETER: (Complies).

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1 BY MR. MIZRAHI:

2 Q. Hi Carlos.

3 A. Hi.

4 Q. Carlos, besides receiving the
5 treatment for your eye in April 2015 and the
6 pacemaker treatment in May 2015, did you
7 receive any other medical treatment in 2015?

8 MR. LEON: Objection, asked and

9 answered. You may answer one last time.

10 You may respond.

11 THE WITNESS: No.

12 Q. Besides the health issues that you
13 previously described, did you previously suffer
14 from any other health issues in 2015?

15 MR. LEON: Objection to the form of
16 that question. And it's also been asked
17 and answered, just like the previous
18 question, and I'm instructing my client
19 to respond to it one last time.

20 THE WITNESS: No.

21 Q. Besides the eye vision problem that
22 you described and the problem with your
23 pacemaker, did you suffer from any health
24 issues in 2016?

25 MR. LEON: Objection to the form of

1 the question. You may respond to that
2 question.

3 THE WITNESS: No.

4 Q. Besides suffering from the vision
5 problems that you were describing and the
6 balance issues that you were describing, did
7 you suffer from any other health issues in
8 2017?

9 MR. LEON: Objection to the form of
10 that question and to the extent that it
11 mischaracterizes prior testimony. You
12 may respond.

13 THE WITNESS: No.

14 Q. Besides the vision issues that you
15 previously described and the balance issues
16 that you previously described, did you suffer
17 from any other health issues in 2018?

18 MR. LEON: Objection to the form of
19 that question and to the extent that it
20 incorrectly recites what you have said
21 previously. You may answer that
22 question.

23 THE WITNESS: No.

24 Q. Besides the vision issues that you
25 previously described and the balance issues

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1 that you previously described, did you have any
2 other health issues in 2018?

3 MR. LEON: Objection to the form of
4 that question, objection to the extent
5 that it mischaracterizes prior testimony
6 and, finally, asked and answered. You
7 may respond.

8 THE WITNESS: No.

9 Q. Carlos, you testified that you
10 received a surgery in May 2015 for a pacemaker;
11 is that correct?

12 MR. LEON: Objection, asked and
13 answered. You can answer one more time.

14 THE WITNESS: Yes.

15 Q. After you received the surgery in
16 May 2015, were you able to stand for longer
17 periods of times?

18 MR. LEON: Objection to the form of
19 that question. It's ambiguous. You may
20 respond if you understand it.

21 THE WITNESS: Yes.

22 Q. Carlos, after you received the eye
23 surgery in April 2015 were you able to stand
24 for long periods of time?

25 MR. LEON: Objection to the form of

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1 the question. It's ambiguous. You may
2 respond to that question if you
3 understand it.

4 THE WITNESS: Can you repeat the
5 question, please?

6 Q. Carlos, after you received the eye
7 surgery in April of 2015, were you able to
8 stand for long periods of time?

9 MR. LEON: Objection to the form of
10 the question. It's ambiguous. You may
11 respond to that question if you
12 understand it.

13 THE WITNESS: Yes.

14 Q. Carlos, did the surgery that you
15 received in May 2015 negatively impact your
16 ability to engage in physical activities?

17 MR. LEON: Objection to the form of
18 that question, compound and ambiguous.
19 You may respond to the extent that you
20 understand that question.

21 THE WITNESS: Can you repeat the
22 question?

23 Q. Did the surgery that you received in
24 May 2015 negatively impact your ability to
25 engage in physical activity?

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1 MR. LEON: Objection to the form of
2 that question. It's more ambiguous than
3 the previously withdrawn question. You
4 may respond to that question,
5 Mr. Chincha.

6 THE WITNESS: No.

7 Q. Do you currently engage in any
8 physical activities?

9 MR. LEON: Objection to the form of
10 that question. Super confusing. You may
11 respond.

12 THE WITNESS: I go walking.

13 Q. Do you engage in any other physical
14 activities?

15 MR. LEON: Objection to the form of
16 that question. Confusing, ambiguous.
17 You may respond.

18 THE WITNESS: No.

19 Q. Are you able to engage in any other
20 physical activities besides walking?

21 MR. LEON: Objection to the form of
22 that question. Confusing, ambiguous and
23 also highly irrelevant. You may respond
24 to this question and this line of
25 questions one last time.

1 And just to clarify, like I said,
2 the last part, that he's going to answer
3 this line of questions one last time.

4 THE WITNESS: No.

5 Q. Earlier today, Carlos, you testified
6 that you get tired frequently; is that correct?

7 MR. LEON: Objection to the form of
8 that question and to the extent that it
9 mistakenly recounts prior testimony. You
10 may respond.

11 THE WITNESS: Now, recently, not
12 before.

13 Q. Do you need to rest during the day
14 because of your health problems?

15 MR. LEON: Objection to the form of
16 the question to the extent that it
17 assumes evidence and testimony not
18 previously acknowledged or admitted in
19 this action. You may respond.

20 THE WITNESS: Can you repeat the
21 question?

22 Q. Do you need to rest during the day
23 because of your health problems?

24 MR. LEON: Objection to the form of
25 the question and to the extent that it

1 misconstrues prior testimony or assumes
2 prior evidence and testimony that has not
3 been admitted into this action or this
4 deposition. Subject to those objections,
5 you may respond.

6 THE WITNESS: No.

7 Q. Did you have to rest during the day
8 because of the health problems that you've
9 previously described in 2015?

10 MR. LEON: Objection to the form of
11 the question. Confusing, lacks scope --
12 limited scope or clear scope. You may
13 respond.

14 THE WITNESS: Yes.

15 Q. And how long did you rest during the
16 day in 2015?

17 MR. LEON: Objection to the form, to
18 the extent that it assumes facts in
19 evidence not previously admitted, to the
20 extent that it is confusing and
21 misleading. You may respond if you
22 understand the question.

23 THE WITNESS: Could you repeat the
24 question?

25 Q. How long did you rest during the day

1 in 2015?

2 MR. LEON: Objection to the form of
3 that question --

4 MR. MIZRAHI: You've already
5 objected. You don't need to -- you've
6 already objected. You've asked me to
7 repeat it. You've already objected to
8 the question.

9 MR. LEON: Jason. Jason. Calm
10 down. I know being ill-informed gets you
11 flustered, but please, don't yell at me.
12 Don't yell at me.

13 And you said the question again, so
14 I'm objecting to your new question, which
15 is still bad. So, I'm directing my
16 client --

17 MR. MIZRAHI: It's the same
18 question. It's the same question.

19 MR. LEON: Jason, let's continue --
20 no. It's actually not.

21 So, I'm going to continue objecting
22 to an improper line of questions, as
23 you've done throughout this deposition,
24 and while you're going back and forth
25 with me, my client is going to wait until

1 we're done, a clear question's asked --

2 I'm sorry. Did you just mute me?

3 Did you just mute me? Jason, did you
4 just mute me?

5 Madam Court Reporter, can you hear
6 me?

7 THE REPORTER: Yes, I can.

8 MR. LEON: Okay. Because, I just
9 saw "Muted by the host," so I'm not sure,
10 Jason, if you have access and you're
11 muting me. Because, if that's what
12 you're doing, then we're not going to
13 continue this until you stop doing that.

14 So, Jason, were you muting me?

15 Jason, were you muting me?

16 MR. MIZRAHI: No. I wasn't muting
17 you.

18 MR. LEON: Okay. Madam Court
19 Reporter and Mr. Translator and my
20 client, if at any point in time I'm
21 talking and it seems like I went mute,
22 please let me know so we can leave a
23 clear record.

24 So, what I was saying before is,
25 Mr. Mizrahi, you asked a question, I

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1 thought it was not properly phrased, I
2 objected, directing my client to respond.

3 You then proceeded to repeat the
4 question not quite the same, I objected,
5 repeated my objection, and then you
6 turned bright red and started yelling at
7 the top of your lungs when I was
8 objecting.

9 Don't do that. It's bad, it's not
10 appropriate in this sort of action.

11 Please repeat the question for my
12 client for him to respond and so that I
13 can make my objection clear for the
14 record.

15 Q. Carlos, how long did you rest during
16 the day in 2015?

17 MR. LEON: Objection to the form of
18 that question. It's confusing, it's
19 unclear and it appears to assume evidence
20 and testimony that has not been
21 previously admitted in this deposition.

22 Subject to those objections,
23 Mr. Chincha, you may respond.

24 THE WITNESS: (Speaking in Spanish.)

25 MR. LEON: Can you translate that,

1 please?

2 THE WITNESS: The gentleman is
3 confusing.

4 MR. LEON: "The gentleman is
5 confusing me" is what my client just said
6 in Spanish.

7 He's referring to you, Mr. Mizrahi.
8 So, I'd like to state that for the record
9 that my client is claiming that you are
10 confusing him. So, please stop confusing
11 my client and ask questions.

12 MR. MIZRAHI: Madam Court Reporter,
13 could you please repeat back the line of
14 questioning beginning from, "Did you need
15 to rest during the day because of the
16 health problems that you previously
17 described in 2015?"

18 (Record read.)

19 MR. MIZRAHI: That's fine.

20 MR. LEON: Sorry. I'm going to take
21 a quick break right now, because I need
22 to use the bathroom.

23 MR. MIZRAHI: Mr. Interpreter, if
24 you could just please --

25 MR. LEON: Jason, Jason, I'm going

1 to go take a break.

2 MR. MIZRAHI: There's a question
3 pending.

4 MR. LEON: No, there actually isn't
5 a question pending.

6 MR. MIZRAHI: There is.

7 MR. LEON: No, no. There actually
8 isn't. You've asked a question, he's
9 answered. There's not a new question
10 pending here.

11 So, we're going to take a break
12 right now, okay, because you asked the
13 question a billion times and he responded
14 to it.

15 MR. MIZRAHI: There's a question
16 pending.

17 MR. LEON: Okay. How about this.
18 Right after he answers your question we
19 are taking a break.

20 If you do what I think you're going
21 to do, which is start asking another one
22 as soon as we're going to take the break,
23 I'm going to cut you off and tell you
24 we're done and we're taking the break,
25 because I've asked for a break.

1 So, you're going to finish your
2 question, ask it again and he'll answer
3 it again. And at that point we're taking
4 a break.

5 Mr. Translator, could you please
6 translate that directive to my client.

7 THE INTERPRETER: (Complies.)

8 MR. LEON: That's it. There's no
9 question pending.

10 MR. MIZRAHI: There's a question
11 pending. Could you please repeat the
12 last question that was pending?

13 MR. LEON: And please, if there's a
14 response from my client in any shape or
15 form, please read that out loud, as well,
16 because I recall there being an answer.

17 MR. MIZRAHI: Madam Court Reporter,
18 if you could just repeat back the line of
19 questioning with the answer and if the
20 interpreter could please translate that
21 back for the client.

22 THE INTERPRETER: Sure.

23 (Record read.)

24 MR. MIZRAHI: If you could please
25 repeat back the line of questioning

1 asking if he rested during the day in
2 2015.

3 MR. LEON: I'm objecting in advance,
4 because that's a confusing thing for
5 everyone. So, I'm objecting to the fact
6 that it's summarizing a whole bunch of
7 stuff. So, I'm going to start with that
8 objection and wait for the question to
9 come in.

10 (Record read.)

11 MR. LEON: Are we reading the answer
12 back? Are we reading the answer back,
13 just to be clear?

14 THE REPORTER: Are you wanting all
15 the questions and answers read from then
16 until now?

17 MR. MIZRAHI: Let's take a bathroom
18 break.

19 MR. LEON: Im sorry?

20 MR. MIZRAHI: Do you need to take a
21 bathroom break?

22 MR. LEON: No. I'd rather finish
23 this right now, then I'll go use the
24 bathroom, so there won't be a question
25 pending and I won't be causing any

1 issues. I want to work with you. Get
2 that question out.

3 I'm sorry. Could you repeat the
4 question, the last question, so that my
5 client could respond and we can take that
6 break?

7 THE REPORTER: The very last one or
8 the line of questioning?

9 MR. LEON: The very last question.

10 MR. MIZRAHI: Madam Court Reporter,
11 you don't have to listen to him --

12 MR. LEON: So, you're withdrawing
13 the question? Are you withdrawing the
14 question? Because, otherwise there is a
15 pending question and my client needs to
16 respond to it and I'm asking the court
17 reporter to read it back.

18 Just because you're paying for the
19 transcript doesn't mean you order
20 everyone around here.

21 So we'll leave it clear for the
22 record, are you withdrawing the question?
23 Yes or no.

24 MR. MIZRAHI: No. The question's
25 still posed.

1 MR. LEON: Okay. So then, let the
2 court reporter repeat the question so he
3 can answer it so that there's no pending
4 question when I go to use the bathroom.
5 God forbid that should happen. So, I
6 want to clear it up before we go on our
7 break.

8 Please don't roll your eyes, I'm
9 being very sincere with you. You're
10 taking your time sipping your tea.
11 What's your response to my question?

12 MR. MIZRAHI: Are you finished?

13 MR. LEON: Are you going to ask the
14 question? Are you going to have the
15 question read back? Are you going to
16 allow my client to respond to it or are
17 you withdrawing the question?

18 Because, if you're not going to ask
19 the court reporter to repeat it and
20 you're going to tell her not to repeat
21 the question, then I see that as
22 withdrawing the question.

23 MR. MIZRAHI: Well, we can withdraw
24 the question. I'll ask it again.

25 MR. LEON: Okay. We're taking a

1 break.

2 THE INTERPRETER: How long is the
3 break?

4 MR. MIZRAHI: We'll take a
5 two-minute.

6 MR. LEON: No, I'm sorry. I'm
7 sorry. You're not going to dictate how
8 long I'm going to use the bathroom for.

9 MR. MIZRAHI: We're going to take --

10 MR. LEON: No, no. Jason, you're
11 not going to dictate how long I'm going
12 to use the bathroom for. So, I'm taking
13 a bathroom break. I hope you can respect
14 biological necessities. Please. Please.

15 I'm going to take a five- to
16 ten-minute break and I'm going to ask my
17 client -- I'm going to ask my client --
18 I'm going to ask my client -- I'm going
19 to ask my client -- I'm going to ask my
20 client -- stop interrupting. Stop
21 interrupting. Stop interrupting. I'm
22 going to ask my client to turn off the
23 video --

24 THE INTERPRETER: I can't hear
25 anymore.

1 MR. MIZRAHI: He needs to go to the
2 bathroom. I'm not going to waste time
3 with him explaining --

4 THE INTERPRETER: The Witness cannot
5 hear us.

6 MR. LEON: Okay. I want this to be
7 translated, as well.

8 Jason, you've done this now three
9 times and I'm calling you out on it, that
10 when I've been talking on the record you
11 have abused the Zoom host -- now you're
12 walking out. I'm going to put this
13 statement on the record.

14 You have muted me when I've been
15 talking in order to stop me from making
16 statements on the record. You do that
17 again and this deposition will not
18 continue, Jason.

19 Do you understand me? I'm talking
20 to you. Because, you don't get to do
21 that. You don't get to shut my mic off
22 when I'm making a statement on the record
23 on behalf of my client.

24 How many more legally inappropriate
25 things can you do in this deposition?

1 You've already been told by the federal
2 court judge to stop asking inappropriate
3 questions. Now you're cutting off my
4 mic?

5 MR. MIZRAHI: Yeah.

6 MR. LEON: No. You don't get to do
7 that.

8 MR. MIZRAHI: You're wasting
9 everyone's time, so I'm cutting off your
10 mic.

11 MR. LEON: No, no.

12 MR. MIZRAHI: We're taking five
13 minutes.

14 MR. LEON: No, no. So, you admit
15 that you cut my mic off? You admit that
16 you cut my mic off?

17 MR. MIZRAHI: We'll come back in
18 five minutes.

19 MR. LEON: Have you admitted -- do
20 you admit that you cut my mic off
21 repeatedly now, at least two to three
22 times? Do you admit it?

23 Okay. You do that again,
24 deposition's over and you get to make an
25 application to the Judge. And you walked

1 away -- I'm still talking on the record,
2 the court reporter can get this.

3 You do not get to cut my mic. You
4 do that again, I can't trust that the
5 transcript is accurate and no fault of
6 the court reporter, the translator or my
7 client.

8 You do that again -- and just to
9 clarify, Mr. Mizrahi has walked away.
10 He's probably just a couple feet away
11 from the camera, can hear me. If he does
12 that again this deposition's over,
13 because I'm not going to allow that to
14 happen. It's inappropriate and if you do
15 it again I will request monetary
16 sanctions against you and your firm.

17 Hello, Mr. Mizrahi. You returned as
18 soon as that was done being translated,
19 so I'm going to assume you heard all
20 that. Thank you. We're going to be
21 taking that break now.

22 Mr. Chincha, please have your
23 daughter cut off the mic and the video
24 while we take that break to stop Counsel
25 from engaging in anything that might be

1 appropriate. I am now exiting.

2 MR. MIZRAHI: Before we go off the
3 record I'd just like to make a point that
4 Counsel cannot use --

5 MR. LEON: We're off the record?

6 We're off the record?

7 THE REPORTER: No. We're not off
8 yet.

9 MR. LEON: Oh, okay. So,
10 Mr. Chincha, please have your daughter
11 cut your video and your mic so that
12 Counsel can have a conversation on the
13 record.

14 Okay. All right. We're back on the
15 record. So, my client is not on this
16 call right now or this part of the Zoom
17 deposition.

18 What were you saying, Jason?

19 MR. MIZRAHI: I would like to make a
20 quick statement before we break.

21 MR. LEON: I'm listening.

22 MR. MIZRAHI: I'd like to make a
23 statement for the record that counsel is
24 prohibited from engaging in any ex parte
25 conversations or consultations with his

1 client during a break.

2 If he needs to take a break to use
3 the bathroom, he's welcome to do so.
4 He's prohibited from engaging in any
5 counseling or consulting to his client or
6 coaching of his client at any time
7 while on break.

8 Thank you. We can take a break.

9 MR. LEON: I'm going to say this and
10 if you walk away like you were doing
11 before, I'll just finish.

12 I'm not saying that we were going to
13 do that, because I'm going to use the
14 bathroom, but I do not accept your
15 characterizations of what you think is
16 going on and I don't agree with your
17 legal conclusion. So, stating that for
18 the record.

19 I will now take the break, use the
20 bathroom and return as quickly as
21 possible for you, Jason. Thank you.

22 THE INTERPRETER: Is this going to
23 be a five-minute or a ten-minute break?
24 Just want to know.

25 MR. LEON: I'd say -- let's do ten

1 minutes. Thank you.

2 MR. MIZRAHI: We're going to go
3 back -- a quick bathroom break, five
4 minutes.

5 MR. LEON: No, no, no. I'm sorry.
6 No, no. No, no. I'm telling you, Jason,
7 right now, I'm not returning in five
8 minutes. I just told you, ten minutes.

9 You can say whatever you want. You
10 can be back in five minutes, I will be
11 back in ten minutes. Thank you.

12 It is now 2:23. As of the moment
13 that I finish this sentence I'm cutting
14 my mic and my video to avoid this
15 completely nonsensical back and forth.
16 Thank you.

17 (Recess taken.)

18 (Off-the-record discussion held.)

19 MR. LEON: Mr. Mizrahi, as I just
20 told you right before going back on the
21 record, given the inappropriate things
22 that you did, I've been advised --

23 Well, first of all, from my personal
24 experience, you un-mic'd me at least two
25 to three times when I was making

1 statements on the record.

2 Whether or not you thought I was
3 going on too long about it, that's so
4 inappropriate to un-mic me.

5 And two, I just confirmed with my
6 client and I asked his daughter that you
7 did repeatedly attempt to and un-mic'd
8 his feed when I took the break. And that
9 is really something that you've been
10 doing all along to me, so it's not
11 surprising that you would do something
12 about it with them.

13 I want a court ruling saying that,
14 regardless of who's taking over, that
15 you're not going to take over host
16 privileges and you're not going to do
17 this again.

18 So, I can't go on in good faith,
19 because I don't know how much has been
20 cut off because of what you've done.

21 And I don't want to debate about it,
22 we don't need to recount every last
23 question. There's not enough time for
24 that. I'm going to call Judge Tiscione's
25 chambers.

1 And all this time that we're wasting
2 is on you. Our position is that you're
3 waiving your time because of the
4 inappropriate sanctionable --
5 sanctionable actions that you've --

6 MR. MIZRAHI: (Inaudible), but hurry
7 up.

8 MR. LEON: I'm sorry. What was
9 that?

10 MR. MIZRAHI: You're wasting
11 everybody's time.

12 MR. LEON: Oh. Okay. And obviously
13 I disagree, Jason.

14 MR. MIZRAHI: Yeah.

15 MR. LEON: Yeah. So, I'm going to
16 call right now. I'm just pulling up
17 Judge Tiscione's number and I'm going to
18 dial right away. One moment.

19 Okey-dokey.

20 And please, Madam Court Reporter, if
21 you can keep all of this on the record.

22 (The following call to Magistrate
23 Judge Steven Tiscione's chambers took
24 place:)

25 UNIDENTIFIED SPEAKER: Good

1 afternoon, Magistrate Judge Tiscione's
2 chambers.

3 MR. LEON: Hi. My name is Louis
4 Leon from the Law Offices of William
5 Cafaro. I represent the Plaintiff in a
6 matter captioned Chincha v. Patel.

7 Actually, the parties called earlier
8 today. There was a discovery dispute at
9 a deposition that Defendant is partaking
10 in of my client. And I am Plaintiff's
11 counsel. I'm the one defending the
12 deposition.

13 I'm calling regarding an extremely
14 urgent sensitive matter that we need to
15 address with the Judge. It's an issue so
16 important that I think it could
17 potentially result in the deposition
18 being cancelled.

19 UNIDENTIFIED SPEAKER: What is the
20 number to reach you, please?

21 MR. LEON: Sure. I can give you my
22 cellphone number. XXX-XXX-XXXX.

23 UNIDENTIFIED SPEAKER: Do you have a
24 court reporter present?

25 MR. LEON: Yes, I do.

1 UNIDENTIFIED SPEAKER: Speakerphone
2 capabilities?

3 MR. LEON: Yes.

4 UNIDENTIFIED SPEAKER: Thank you.

5 (The call was concluded.)

6 MR. LEON: Madam Court Reporter, I
7 would just ask that any -- I'm sure
8 Defense counsel won't object to this --
9 any cellphone numbers given from either
10 Defense counsel or myself be redacted for
11 the record, just for confidentiality.

12 I'm going to wait until Judge
13 Tiscione calls us back --

14 MR. MIZRAHI: We're going to move
15 forward with the deposition.

16 MR. LEON: Well, Jason, I'm glad
17 that that's what you want. But, when you
18 do something as inappropriate as what
19 you've been doing with no basis
20 whatsoever --

21 MR. MIZRAHI: Louis --

22 MR. LEON: No, no. Jason, Jason,
23 I'm not debating with you, I'm telling
24 you how this is going to happen. You can
25 do it, but you're not going to be able to

1 proceed without me or my client.

2 You did something inappropriate that
3 the Judge needs to rule on. If the Judge
4 determines that it's fine to un-mic
5 people when you don't want to hear them
6 on the record or try to listen in to my
7 client's private conversations, if he's
8 even having one, if the Judge thinks
9 that's appropriate, then we'll proceed
10 right away.

11 MR. MIZRAHI: Louis, we're going to
12 move forward with the deposition --

13 MR. LEON: Great, Jason. Then you
14 can continue. We're going to wait and
15 I'm going to give him -- let's give it
16 15 --

17 MR. MIZRAHI: No.

18 MR. LEON: Okay. Jason, I'm not
19 asking you for your opinion, I'm not
20 asking for your perspective. I'm telling
21 you that this is such an egregious
22 violation of your duties as an attorney
23 in federal court that I'm not going to
24 continue while you continue running afoul
25 of every decency law or statute that

1 there is.

2 Please. We're going to wait for the
3 Judge to call, because I'm not going to
4 have this argument over and over.

5 As of right now I don't know how you
6 may have tainted the record. And you
7 knew exactly what you were doing. You
8 knew exactly what you were doing. And
9 this is all, again, on the record.

10 So, we're going to wait, I'm going
11 to come back on the record around --

12 MR. MIZRAHI: You're wasting
13 everybody's time.

14 MR. LEON: No, no, Jason. You
15 wasted everyone's time the moment you
16 starting doing unethical things like
17 trying to listen in to my client's room
18 and see if he was talking. Because,
19 that's what it was about, right?

20 Because, when we went -- right
21 before going off the record -- actually,
22 that might be a call right there.

23 (The following call with Magistrate
24 Judge Steven Tiscione took place:)

25 MR. LEON: Hello.

1 THE COURT: Good afternoon.

2 MR. LEON: Hello, Justice Tiscione.

3 This is Louis Leon, Plaintiff's counsel.

4 I have you on speaker near the laptop.

5 The court reporter, Defense counsel
6 and the translator are currently on the
7 other video call line, my client is not
8 on the line right now.

9 I wanted to bring up something that
10 I can only characterize as -- and I'm
11 really not being dramatic -- one of the
12 most egregious things I've ever seen an
13 attorney do in a deposition that warrants
14 a judicial ruling, because there's no
15 other way around it.

16 At some point at the beginning of
17 this case Mr. Jason Mizrahi took over
18 hosting privileges of the Zoom
19 application. I thought nothing of it.

20 But, throughout at least the last
21 hour, when I was making objections or
22 statements on the record, I saw him --
23 because it says to me that he did it --
24 he would un-mic me while I was making
25 objections so that no one else could hear

1 what I was saying.

2 He did that repeatedly and I called
3 him out on it and I even put it on the
4 record that he's done it at least three
5 times.

6 Adding insult to injury -- and this
7 is, perhaps, the most egregious thing
8 that he just did -- while maintaining
9 those hosting privileges there was a
10 question he asked my client and I said,
11 "I'm going to take a bathroom break."

12 He didn't like the fact that we were
13 taking a break, he wanted to continue,
14 and he told my client, "Under no
15 circumstances can you talk to your
16 attorney."

17 Fine. I stated, "Look, we're not
18 going to talk, I have to use the
19 bathroom, but just, I don't agree with
20 your characterization," but we go off the
21 record.

22 As I'm about to go to the bathroom I
23 get a call from my client and his
24 daughter, who's helping him, saying
25 that -- and I can have his daughter come

1 in and respond and tell Your Honor this,
2 because I just clarified this with her --
3 Mr. Mizrahi purposely and repeatedly
4 un-mic'd --

5 So, I always ask my client to un-mic
6 his feed and to close the video so that
7 nothing can be heard or seen from his
8 room.

9 Mr. Mizrahi clearly, thinking that
10 my client was going to have a private,
11 confidential, privileged conversation
12 with me, on three or four occasions
13 attempted to un-mic his feed. My
14 client's daughter will verify that.

15 And this is one of the most
16 egregious things ever, trying to, like,
17 hack someone's phone and listen to an
18 attorney and client talk.

19 I can't continue if this is what
20 he's going to do and we need a ruling
21 saying that this is inappropriate and
22 that, you know, any absences of the
23 record created by this, it's going to be
24 held against Defendants.

25 And Mr. Mizrahi can't justify why

1 he's done any of this. When I asked him
2 "Why did you un-mic me" when I was on the
3 record, he said, "Oh, you're talking too
4 much, we're done, you're talking too
5 much, I'm cutting you off."

6 Are you serious? Like -- that's the
7 inappropriate thing he's done.

8 It's egregious and we think it's
9 sanctionable, Your Honor. I've never had
10 an attorney do this to me. I'm a pretty
11 young attorney, but I've never seen any
12 attorney ever do anything like that.

13 So, I will let Mr. Mizrahi defend
14 his actions that are clearly on the
15 record.

16 THE COURT: Okay.

17 MR. MIZRAHI: Yeah, Judge, I'm sorry
18 that we're going to have to burden you
19 again for the second time today for an
20 issue that is obviously -- could be
21 avoided.

22 The fact of the matter is that, ever
23 since this deposition has been commenced,
24 Plaintiff's attorney has been
25 unnecessarily prolonging this deposition.

1 He's been objecting to every single
2 line of questioning incessantly. He's
3 been instructing his client and guiding
4 his client.

5 The objections that have been raised
6 are multiple objections as to form, which
7 he then says are confusing before his
8 client ever raises any issues with
9 wording or with the form of the question
10 or whether or not he understands them,
11 which leads his client to then say that
12 they're confusing. This has been going
13 on the entirety of the deposition.

14 More recently we've now been taking
15 a 20-minute break for what Plaintiff's
16 counsel has described as a bathroom
17 break. I have no idea what he's talking
18 about with muting or un-muting anybody's
19 microphone.

20 MR. LEON: That's on the record.
21 Let's have the reporter read it back.
22 And that's a lie and you can be held
23 accountable for lying about this.

24 You admitted it on the record,
25 Mr. Mizrahi. Should we ask the court

1 reporter to reed it back?

2 MR. MIZRAHI: Mr. Leon had requested
3 that I give host privileges to one of the
4 court reporters. One of the court
5 reporters has host privileges.

6 We are now wasting another half an
7 hour since we've gone on break to deal
8 with this issue and it's a half an hour
9 that we're going to have to tack back on
10 to the --

11 MR. LEON: No.

12 MR. MIZRAHI: -- deposition time.

13 He's clearly been prolonging this
14 deposition from the beginning with his
15 unnecessary objections and he's
16 prolonging it now with a phone call that
17 has been avoided or could have been
18 avoided.

19 He's asked me to transfer the host
20 privileges to somebody else, I
21 transferred the host privileges to
22 somebody else so there weren't any other
23 issues. There's really no reason to be
24 having this phone call --

25 MR. LEON: Your Honor, I could have

1 my client's daughter answer your
2 questions under oath about what just
3 happened, and Mr. Mizrahi clearly stated
4 on the record that he had muted me
5 because I'm ranting, because I'm talking
6 too much.

7 There's no excuse -- I mean,
8 Mr. Mizrahi has a habit of lying to
9 Your Honor and this is prime center the
10 type of example that Your Honor needs to
11 consider.

12 We can go back to the record where
13 he admits it. And now he's saying, "I
14 don't know what that's about"?

15 How much more can he get away with
16 in this case lying to a federal judge,
17 lying on the record? There has to be
18 consequences and he can't be allowed to
19 continue doing this.

20 Because, he did this to me three
21 times on the record and he did it to my
22 client off the record in an effort to
23 listen in on conversations that he
24 thought that my client might be having
25 with me.

1 THE COURT: Okay. What exactly is
2 going on with this Zoom thing? You've
3 got -- I guess, Mr. Mizrahi, you're the
4 one in charge of deciding, like, who's
5 being, you know, allowed to talk on it or
6 not? What is --

7 MR. MIZRAHI: No, Your Honor. The
8 court reporter is.

9 MR. LEON: That's now. That's now.
10 Not before. Now. But, before it wasn't
11 the case.

12 And I'll gladly file a letter
13 providing the evidence from the
14 transcript that Mr. Mizrahi insists that
15 I'm lying or I'm misreading or
16 misunderstanding what happened.

17 THE COURT: Okay. Well, you're
18 going to have to explain that, because, I
19 agree, I'm not entirely --

20 MR. LEON: Oh, I'll explain it,
21 Your Honor.

22 In the Zoom application the host,
23 the person who essentially has privileges
24 over everyone and everything, can dictate
25 what each person's setting is.

1 On the bottom left screen of the
2 Zoom application there's a mic where you
3 can click "Mute" and you can click "Stop
4 Video." It does not allow you out of the
5 Zoom application.

6 But, when there's a break, everyone,
7 including Mr. Mizrahi, the translator,
8 both translators, the court reporter and
9 anyone else, to avoid being heard in
10 their privacy when no one is supposed to
11 be listening, they all knock out their
12 video, they hit a setting that says "Stop
13 Video" and they hit "Mute" to stop anyone
14 from hearing.

15 Because Mr. Mizrahi had hosting
16 privileges up until literally five or ten
17 minutes ago, when I said I was going to
18 call the Judge, I wasn't taking a
19 bathroom break, I said I was going to
20 have to consider this -- I said I was
21 going to use the bathroom, but also
22 consider the implications of this, during
23 that break I got an urgent call from my
24 client telling me that Mr. Mizrahi had
25 been un-muting his side. And his

1 daughter can confirm that.

2 And it says -- how did my client
3 know that it was him? It says, "The
4 host, Jason Mizrahi, is trying to un-mute
5 your feed." And he repeatedly did it.

6 And my client's daughter had to
7 repeatedly mute it to avoid him from
8 listening to my client.

9 And it seems to me that the only
10 reason this was being done is because
11 Mr. Mizrahi was under some false
12 impression that I was having some
13 conversation with my client which would
14 be privileged and confidential.

15 And if Mr. Mizrahi insists on lying,
16 I will insist on submitting an
17 application to the Court proving that he
18 admitted that he had cut my mic several
19 times and has played with the mic at
20 least on the record.

21 And subsequently he denied it, that
22 it happened off the record, but I will
23 gladly have my client's daughter testify
24 or answer your questions on the record,
25 Your Honor.

1 THE COURT: Look, you know what?
2 For right now let's finish this
3 deposition. Give the court reporter the
4 hosting privileges so that nobody else
5 messes with the mic.

6 Once you have the transcript, if you
7 want to make some kind of a motion based
8 on his cutting off your objections or
9 whatever...

10 You know, without seeing it in front
11 of me it's really hard for me to make any
12 kind of a ruling on that at this point.

13 But, for the rest of this
14 deposition, only the court reporter
15 should have hosting privileges in terms
16 of mic'ing or un-mic'ing people. Okay?

17 MR. LEON: Yes, Your Honor. Could I
18 actually ask just one quick clarification
19 to avoid having Mr. Mizrahi and I making
20 another call?

21 This deposition started at 10:30.
22 Mr. Mizrahi is, for all intents and
23 purposes, I would say, is to blame for
24 all these delays.

25 I don't agree that we should be